

## Democratic Theory and Political Campaigns\*

KEENA LIPSITZ

*Political Science, University of California, Berkeley*

SCHOLARLY debates about political campaigns often focus on topics like “negative advertising” and campaign finance. Although these are important issues, attending to them before one has developed a comprehensive and systematic critique of campaigns is tantamount to putting the cart before the horse. In other words, it is necessary to identify the values one believes campaigns should uphold, and the kind of “information environment” that is required to promote these values in the period preceding an election, *before* one begins to make claims about specific campaign funding schemes and the way candidates should campaign. This paper explores one way of conducting such a critique by considering what a campaign would look like if certain political values representing different strains of contemporary democratic thought were consistently applied to all elements of the campaign process. Specifically, I consider what electoral competitiveness, political equality and deliberation require of campaigns and how these values can be enhanced through certain reforms. Ideally, of course, we want campaigns to function in a way that advances all of these values, but by focusing on them individually, we can see where tensions may arise between them, and perhaps more importantly, where they prescriptively overlap. This is especially important for identifying what kind of campaign and election reforms deserve the most attention from scholars and political reformers.

I begin by briefly describing how I define political competitiveness, political equality and deliberation, and then proceed by considering what kind of information environment bolsters each of these political values within the context of a political campaign. This approach forces us to consider how formal rules and regulations, such as election procedures and campaign finance restrictions, structure a campaign’s information environment in ways that substantively affect the realization of these political values. The second part examines the effect of these rules and regulations more closely by drawing upon

\*An earlier version of this paper was presented at the 2002 meeting of the American Political Science Association in Boston, MA. I would like to thank Charles Beitz, Dennis Thompson and Richard Pildes for their helpful comments. In addition, Samuel Scheffler, Bruce E. Cain, Eric Schickler, Laura Stoker, Shannon Stimson, Dan Schnur, Grigore Pop-Eleches, John Sides and the anonymous referees at the *Journal of Political Philosophy* provided invaluable feedback. The responsibility for the final product, however, resides solely with the author.

empirical research. In the last section, I demonstrate how competition, political equality and deliberation can also be used at a more micro-level as lenses for judging actual candidate practices and strategies by briefly considering negative advertising in campaigns. Ultimately, I conclude that a certain class of reforms, namely, those that increase competition between candidates, advances all three of the political values within the American political context. For this reason, I argue that this area of reform deserves the most attention from scholars and political reformers, at least in the immediate future.

## I. THREE POLITICAL VALUES

### A. COMPETITION

Although competition occurs in many areas of society, here I adopt—in line with a long political science tradition—an economic understanding of the concept. Of course, this is only a “ballpark” definition of the term; it is by no means clear what competition requires in a political context. The instinct is to turn to Joseph Schumpeter for guidance, since he was one of the first political scientists to see the parallel between voters and consumers, but, as I will demonstrate, he defines the word far too narrowly. Consequently, I draw upon the work of contemporary scholars to take the concept of competition further.

For Schumpeter, competition in the political realm translates into the idea of “free competition for a free vote.” At a basic level, this means that citizens—like consumers—should be able to choose which group of political elites runs the government, and political elites should have the opportunity to sell themselves to voters. Yet, there are at least two ways in which Schumpeter’s conception of competition is “minimal.” First, he argues that most forms of anticompetitive behavior are to be expected and even tolerated. Military insurrections may stray beyond the limits of what is acceptable, but for the most part, “. . . cases that are strikingly analogous to the economic phenomena we label ‘unfair’ or ‘fraudulent’ competition or restraint of competition” are tolerable. The only justification he offers for this claim is that any attempt to create more perfect competition in politics is bound to fail given the nature of those who seek political power, and is therefore an “unrealistic ideal.”<sup>1</sup>

A second way Schumpeter might be considered minimal is that he argues that competition requires only contestation. That is to say, as long as two parties or candidates are competing, his definition of competition has been satisfied. Political oligopolies, or situations in which two parties dominate the politics of a country and third parties cannot effectively compete, are acceptable. Generations of American political scientists have accepted this minimalist standard, in part because it is enough of a challenge to ensure that there is healthy

<sup>1</sup>Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper, 1947), p. 271.

competition between the two major parties, especially when incumbents enjoy such an advantage in the electoral arena.<sup>2</sup> For example, since World War II, more than 90 per cent of House elections have included incumbents, and over 90 per cent of them have won.<sup>3</sup> Other political scientists argue that the bias against third parties was built into the system by the Constitution, and moreover, that there are more pressing issues to deal with in a democracy. The comments of one scholar summarize this view succinctly:

promoting competition (i.e., above the threshold condition of contestation) is not a fundamental state interest in the way that preserving the integrity of the ballot or preventing corruption is. A democratic system cannot operate if the ballot is compromised or if preferences are coerced. By comparison, it is simply not fundamental to the system . . . that voters have three rather than two choices.<sup>4</sup>

In the last decade, however, a number of political scientists and election law scholars have challenged this view. Samuel Issacharoff and Richard H. Pildes argue that the two major parties dominate American politics because they have managed to “lock up” political institutions to forestall competition.<sup>5</sup> In other words, the major parties have colluded to structure political competition in a manner that disadvantages third parties. Consequently, even as Issacharoff and Pildes acknowledge that single-member electoral districts inevitably channel political competition into a two-party system, they argue that this fact does not give the major parties license to insulate themselves further from competition by structuring electoral law to their advantage.<sup>6</sup> Consequently, they argue that the courts should act to restore a robust political market.<sup>7</sup>

Similarly, Ian Shapiro contends that, “competition is the lifeblood of democracy” and that, “meaningful political competition requires that there be opposition parties waiting in the wings, criticizing the government and offering

<sup>2</sup>The comments of one New Zealand political scientist, Jack Vowles, suggest this bias against third parties may also have something to do with the education political science graduate students receive. He explains, “The American hegemony in the literature of political science and, to a lesser extent, that of Britain, contribute to teaching and scholarship which privilege first-past-the-post (FPTP) systems, turning out graduates who move into teaching, business or government to whom the superiority of FPTP systems [is] virtually unquestionable.” Quoted in Douglas J. Amy, *Real Choices/New Voices: The Case for Proportional Representation in the United States* (New York: Columbia University Press, 2002), p. 172.

<sup>3</sup>Gary C. Jacobson, *The Politics of Congressional Elections* (New York: Longman, 1997), p. 20.

<sup>4</sup>Bruce E. Cain, “Garrett’s temptation,” *Virginia Law Review*, 85 (1999), 1589–1603 at p. 1603.

<sup>5</sup>Samuel Issacharoff and Richard H. Pildes, “Politics as markets: partisan lockups of the democratic process,” *Stanford Law Review* 50 (1998), 643–717.

<sup>6</sup>*Ibid.*, p. 646.

<sup>7</sup>Specifically, Issacharoff and Pildes encourage the courts to draw a parallel between incumbent parties and corporate managers who try to protect themselves from outside challenges through the use of procedural devices. Recently, the trend in corporate law scholarship has been to move away from policing the behavior of individual managers and to view the purpose of regulation as, “the construction of appropriately competitive markets that will discipline managers to act in the interests of shareholders” (p. 647). Issacharoff and Pildes are proposing a similar shift in public law, i.e., that the courts should focus on how laws created by incumbent parties structure competition in the political market.

voters potential alternatives.”<sup>8</sup> Similar to Issacharoff and Pildes, Shapiro contends the major parties collude under the guise of “bipartisanship” to undermine political competition in much the same way that business firms, such as AT&T and Microsoft, might collude with stronger competitors to undermine weaker ones.<sup>9</sup> Many empirical scholars share Shapiro’s concerns about third parties in the United States. Mark Rosenstone and his colleagues show that third parties are not aberrations of the nation’s political system, but essential components of it. According to these scholars, “they are a weapon citizens can use to force the major parties to be more accountable.”<sup>10</sup> All of these scholars argue that steps must be taken to remedy the many ways in which the major parties have stymied third party competition.

The concept of competition employed in this paper, then, is still “free competition for a free vote,” but my interpretation of these words is more demanding—and perhaps more optimistic—than Schumpeter’s. This interpretation requires not only contestation, but taking steps to make the political system more perfectly competitive. At the most basic level, this means ensuring that major party oppositional candidates can effectively compete, but as the scholars above have argued, it also requires easing the burden of entering competition for third parties.

## B. POLITICAL EQUALITY

Many scholars who are concerned about political equality embrace the notion of “equal political influence,” which requires that no citizen have more power over the political process than other citizens.<sup>11</sup> Often this means ensuring that wealth does not translate into more control over the political process, or conversely, that poverty does not severely diminish one’s political power. The principle of one person – one vote is a natural extension of the belief in the intrinsic equality of citizens, but as many scholars have pointed out, if one acts to preserve equality at the voting stage, one has waited too long; inequalities can manifest themselves at the agenda-setting stage and during the “deliberative” period preceding the vote, that is, the campaign. Consequently, many scholars concerned with preserving equal political influence call for campaign finance reform to prevent well-heeled candidates from using the advantage of wealth to

<sup>8</sup>Ian Shapiro, *The Moral Foundations of Politics* (New Haven, Conn.: Yale University Press, 2003), p. 14.

<sup>9</sup>Like Issacharoff and Pildes, Shapiro believes a significant part of the remedy lies with the courts, arguing that antitrust laws akin to the Sherman Act should be applied to the political parties. He also underscores the importance of creating *non-partisan*—rather than bipartisan—oversight commissions, especially in the realm of electoral regulation. See Ian Shapiro, *The State of Democratic Theory* (Princeton, N.J.: Princeton University Press, 2003), pp. 58–77.

<sup>10</sup>Steven J. Rosenstone, Roy L. Behr, Edward H. Lazarus, *Third Parties in America: Citizen Response to Major Party Failure* (Princeton, N.J.: Princeton University Press, 1984), p. 222.

<sup>11</sup>For an example, see Robert A. Dahl, *Democracy and Its Critics*, (New Haven, Conn.: Yale University Press, 1989).

defeat poorly financed opponents.<sup>12</sup> Obviously, the funding of campaigns is an enormously important issue, but we often lose sight of the fact that money in campaigns affects voters only *indirectly*. That is to say, it is used to purchase the media through which candidates communicate. It is the political communication itself that *directly* affects voters. Consequently, I will focus this discussion on the type of information environment that must be cultivated in a campaign to preserve equal political influence.

In *A Preface to Democratic Theory*, Robert A. Dahl argues that the preservation of equal political influence, as well as voter autonomy, requires that voters possess identical information about the choices confronting them on election day. Dahl explains that meeting this condition allows us to say that voter choice has not been “. . . manipulated by controls over information possessed by any one individual or group.”<sup>13</sup> The question is what does he mean by “identical information”? Does he mean that information must be identical in terms of amount, content, or something else? Dahl’s concern about certain candidates or parties developing a monopoly on information provision suggests that an inequality in terms of quantity—not content—of information is what makes him most uneasy. In other words, Dahl’s call for “identical information” would require that all candidates for a given office disseminate a similar amount of information to voters. Clearly, no candidate for office ever possesses a total monopoly on the information communicated in a campaign,<sup>14</sup> but Dahl reminds us he is looking for “conditions against which real world achievement can actually be measured.”<sup>15</sup> This suggests he might very well be concerned about situations in which one or even two candidates are able to communicate with voters significantly more than other candidates.

Ronald Dworkin reaches a conclusion that is similar to Dahl’s, but rests on a slightly different theoretical foundation. Whereas Dahl is concerned about manipulation of voters—and therefore, voter autonomy—Dworkin asks his readers to consider what the terms of fair political engagement are in a situation

<sup>12</sup>Money in campaigns affects equality of political influence in two ways: 1) it may enable contributors to influence political decisions after the campaign (the corruption argument); and 2) it allows wealthy candidates to communicate more with voters, which frequently translates into an electoral advantage. Although the former is certainly important, here I focus on the latter because it is more relevant to campaign information environments.

<sup>13</sup>Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), p. 70.

<sup>14</sup>The closest example of a communication monopoly formed in a democratic country is the one that Italian Prime Minister Silvio Berlusconi runs. He owns Italy’s three main private television stations, and now, as Prime Minister, holds the reins of the country’s three public television stations as well.

<sup>15</sup>*Ibid.* One could argue that a more appropriate measure is the amount of information that voters *actually receive*, but this would be an extraordinarily high standard that would almost certainly never be met given how citizens differ in terms of their viewing and reading habits, as well as their attentiveness to politics more generally. In other words, all of the candidates for an office could take out the same number of advertisements in a newspaper, but some voters would never see them because they do not read the paper, occasional readers might see half of them, and only a handful of regular readers would see all of them.

where every citizen, including candidates for office and elected officials, is regarded as an “equal partner in a cooperative political enterprise.” In other words, he claims that citizens are equals not only as judges, but as participants in the political process as well.<sup>16</sup> This means we should be just as concerned about the equality of candidates for office and elected politicians as we are about the equality of voters. Dworkin argues that this understanding of equality demands that all citizens—including elected officials, candidates for office, and organized groups—have a fair and equal opportunity to publish, broadcast, or otherwise command attention for their views, which implies that candidates for office should be able to disseminate similar amounts of information to voters.<sup>17</sup>

What is implicit in Dahl’s argument about monopolies on information provision is made explicit in Dworkin’s conception of equality.<sup>18</sup> If one candidate controls the flow of political communication, she will be able to manipulate the opinions of voters; as a consequence, her viewpoint will carry more weight than those of other candidates—not to mention the viewpoints of average citizens. Obviously, such an outcome undermines equal political influence. Regardless, the important lesson is that political equality demands we equalize candidate campaign communication as much as possible.

### C. DELIBERATION

Like the value of political equality, the value of deliberation has roots that run deep within the western democratic tradition. For example, in his eulogy of Athens, Pericles called the period of discussion preceding a political decision in a democracy “an indispensable preliminary to any wise action at all.”<sup>19</sup> Democratic theorists of varied persuasions have long propounded the salutary effects of lively discussion and debate among citizens. In the last decade, however, many scholars have begun to examine the value of deliberation more closely by asking what kind of content it should have. To be sure, theorists who study deliberation offer a variety of answers to this question, but at a basic level they all agree that democratic decision-making requires that citizens who deliberate must provide justifications for the positions they take; if a citizen has no such opportunity, as is often the case in modern mass democracies, they should be

<sup>16</sup>Ronald Dworkin, *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000); and “The curse of American politics,” *New York Review of Books* (October 17, 1996), p. 23.

<sup>17</sup>In *Sovereign Virtue*, Dworkin stresses that this conception of equality does not require that each citizen have the same influence over the minds of other citizens. He argues it is “inevitable and desirable” that some citizens have more influence over others. What he objects to when groups of citizens, “have no or only sharply diminished opportunity to appeal for their convictions because they lack the funds to compete with rich and powerful donors” (p. 364).

<sup>18</sup>Dworkin tries hard to distance himself from majoritarian conceptions of democracy like Dahl’s. For example, he specifically claims that majoritarians have no basis for demanding that we reduce the overall quantity of political information in order to make the influence of all candidates more equal (*Sovereign Virtue*, p. 361). This analysis suggests that Dworkin overstates his case.

<sup>19</sup>Thucydides, *The Complete Writings of Thucydides* (New York: Modern Library, 1934), p. 105.

prepared to offer such justifications should the opportunity arise.<sup>20</sup> Deliberative democrats offer several reasons for why their conception of democracy is superior to others. First, they claim it is simply a fairer version of democracy. In a democracy where all citizens are politically equal and bound to disagree, deliberative democrats argue each citizen should be able to explain why he believes the power of the state should be exercised in a particular way, especially when it is very likely that other people will disagree with him. In this way, this strain of democracy is an alternative to “aggregative” democracy in which “might makes right” or a majority is able to decide the government’s course of action without justifying its position to the minority. Other deliberative democrats argue that deliberation should lead to more agreement among citizens, which may enable us to work through some of the more intractable moral dilemmas that confront our society, such as abortion. Despite the popularity of deliberation, however, there is considerable disagreement about what should count as a legitimate reason or justification for taking a position. Some democratic theorists argue that legitimate “public reasons” should be based upon certain democratic values,<sup>21</sup> while others argue that deliberation would suffer if people were constrained in such a manner.<sup>22</sup> I discuss what I believe are appropriate deliberative expectations in a political campaign later in this article.

The main problem for theorists who are concerned about deliberation is that citizens often have no incentive to deliberate nor to inform themselves in such a manner that they can develop solid reasons for holding the opinions that they do. There are direct and indirect ways of overcoming this dilemma in the context of a campaign. First, one can confront voter apathy and ignorance head-on by creating institutions, such as Bruce Ackerman and James S. Fishkin’s “Deliberation Day,” to increase deliberation among the electorate.<sup>23</sup> A less direct method of promoting deliberation is to advocate better news coverage to increase political interest and knowledge among voters, which may encourage them to seek out and engage in deliberative opportunities. Such is the goal of the public journalism movement.<sup>24</sup> An even less direct method is to design the rules and regulations governing campaigns and their financing in a way that creates incentives for candidates to impart better information to voters. I focus on the

<sup>20</sup>Samuel Freeman, “Deliberative democracy: a sympathetic comment,” *Philosophy and Public Affairs*, 29 (2000), 371–418 at p. 377.

<sup>21</sup>See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), especially pp. 223–7.

<sup>22</sup>For an example of one such response, see William A. Galston, “Diversity, toleration, and deliberative democracy” in *Deliberative Politics*, ed. Stephen Macedo (New York: Oxford University Press, 1999), pp. 39–48.

<sup>23</sup>Bruce Ackerman and James S. Fishkin, “Deliberation day,” *Journal of Political Philosophy*, 10 (2002), 129–52. Another example of such an institution is James Fishkin’s “Deliberative Poll.” See James S. Fishkin, *The Voice of the People: Public Opinion and Democracy* (New Haven, Conn.: Yale University Press, 1995).

<sup>24</sup>James Fallows, *Breaking the News: How the Media Undermine American Democracy* (New York: Vintage Books, 1997).

latter in the remainder of this essay, since it has received less scholarly attention and holds real promise for improving political campaigns.

#### D. IN SUMMARY

As the discussion above demonstrates, viewing the campaign process through the lenses of these political values makes us focus on different parts of that process. Those scholars who are concerned about competition point to the legal framework within which candidates run campaigns, whereas those concerned with equality force us to consider how political information is distributed in a campaign. Deliberativists share some of these concerns, but focus mainly on the content of political discourse.

The discussion above also suggests that competition, political equality and deliberation are interdependent in many ways. For example, we saw that it is not enough to promote competition in the political arena if it is not fair competition. Fairness demands that the rules and regulations structuring political competition apply equally to all parties and candidates. In addition, the fact that when we talk about the value of free speech we often invoke the concept of a “marketplace of ideas,” suggests that deliberation thrives on competition in a certain sense. Moreover, most theorists who write about deliberation claim that it can only take place between political equals, and others go further arguing that personal resources should not affect the ability of citizens to deliberate, which suggests that the deliberative ideal would require economic equality.<sup>25</sup> Dworkin also points out that censorship laws are usually based on the desire of a majority of citizens to silence opinions they despise, again suggesting how interdependent deliberation and equality are.<sup>26</sup> Consequently, it is virtually impossible to enhance or undermine one of these political values without affecting another. The interdependence of these values should become more apparent in the following sections where I use competition, political equality and deliberation as lenses for examining both the laws that shape political campaigns and the way candidates actually conduct them.

## II. DEMOCRATIC VALUES AND POLITICAL COMMUNICATION

Whether one believes a political campaign is a “spectacle,”<sup>27</sup> “ritual,”<sup>28</sup> “conversation,”<sup>29</sup> or “war,”<sup>30</sup> the foremost goal of candidates is to communicate

<sup>25</sup>See Joshua Cohen, “Democracy and liberty” *Deliberative Democracy*, ed. Jon Elster (Cambridge: Cambridge University Press, 1998), p. 194.

<sup>26</sup>*Sovereign Virtue*, p. 366.

<sup>27</sup>Kim Fridkin Kahn and Patrick J. Kenney, *The Spectacle of U.S. Senate Campaigns* (Princeton, N.J.: Princeton University Press, 1999).

<sup>28</sup>Murray J. Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press, 1964).

<sup>29</sup>Roderick P. Hart, *Campaign Talk: Why Elections are Good for Us* (Princeton, N.J.: Princeton University Press, 2000), p. xiv.

<sup>30</sup>Mary Matalin and James Carville, *All's Fair: Love, War, and Running for President* (New York: Random House, 1994).

information—whether it be of a rational or symbolic nature—to voters. There are three main components of campaign political communication that I address here. The first and the one that many scholars consider to be the most important is its content, which includes what candidates say to one another and to voters, and the tone in which they say it. Although these are important elements of political communication, empirical research suggests that we need to be equally concerned about two other dimensions of the campaign information environment: the *diversity* and *quantity* of information that voters receive. In this section, I ask what competition, equality and deliberation demand of political communication in a campaign information environment. This discussion then serves as a foundation for assessing the impact of the rules and regulations that structure electoral competition on the political values considered in this paper.

First, guaranteeing the competitiveness of a campaign may require that candidates have some opportunity to make their case to voters, but it requires little in terms of political communication overall. Increasing competition may create greater information diversity as a by-product, but nothing about the value itself demands it, nor does the value require a certain content or quantity of political information. In fact, if one simply sought to increase competition in electoral events without simultaneously trying to enhance deliberation, campaign communication would take on a striking resemblance to product advertising. Many scholars argue this is precisely the situation that confronts us now. For example, Bruce Ackerman and James Fishkin argue, “commercial norms have completely colonized the norms for political ‘advertisements’. Techniques for selling a Lexus or Marlboros are simply carried over when selling the President.”<sup>31</sup>

There is an important distinction to keep in mind, however. To demand competition in a campaign environment may not provide one with tools for critiquing the content of political communication, but it may provide, as some scholars have argued, a *mechanism* for creating better political discourse. For example, Shapiro argues, in a similar vein to J. S. Mill, that,

When it operates well, competitive democracy facilitates vigorous ongoing debate in which power-seekers are forced to justify their claims to the public while being interrogated by opponents who have incentives to persuade the public of the shortcomings of their views and advantages of different ones.<sup>32</sup>

A competitive campaign environment, then, may encourage politicians to tell the truth and to provide reasons for the positions they hold.

Equality requires more of campaign communication than the value of competition, but far less than deliberation. The most important egalitarian requirement is that candidates must be able to communicate roughly equal

<sup>31</sup>Ackerman and Fishkin, “Deliberation day,” 132.

<sup>32</sup>Shapiro, *The Moral Foundations of Politics*, p. 16.

amounts of information to voters to guard against monopolies on information provision and to ensure that all candidates have an equal opportunity to make their case to voters, as Dworkin has argued. If such a policy were actually implemented, it would have the effect of creating greater information diversity as a by-product. In terms of content, however, equality demands little.

The value of deliberation is the most demanding one in terms of political information. Perhaps the best way to describe what it requires is an “information-rich” campaign environment, which has several key elements. First, citizens need to be exposed to diverse information from a variety of sources. This information should not only be conveyed to them through different types of media, but should represent a variety of viewpoints. If the aim is for citizens to develop more considered judgments and to be able to offer reasons for holding their views, they need to know their full range of options so they can develop a sense of why they hold one particular view over others. Part of this process involves exposing citizens to viewpoints they disagree with. Scholars have found, if left to their own devices, people—especially those who hold a majority opinion—will generally avoid discussing political issues with those they disagree with.<sup>33</sup> The tendency to avoid disagreeable viewpoints may lead to polarization of the electorate as citizens adopt more extreme positions.<sup>34</sup> From the vantage point of deliberativists, this means that citizens should be exposed to information that is both diverse and, at times, disagreeable.

Second, deliberative scholars should also be concerned about the amount of information voters receive because research has found it can seriously affect an individual’s ability to offer reasons for her vote choice. For example, Marion Just and her colleagues found that people living in cities with rich information environments, such as Boston and Los Angeles, were able to offer, “the widest range of considerations about the candidates,” whereas citizens in Winston-Salem, North Carolina, where the political information environment was the poorest of the four cities studied, offered the fewest number of reasons for preferring one candidate over another.<sup>35</sup> This leads Just and her colleagues to conclude the following:

<sup>33</sup>Robert Huckfeldt and John Sprague, “Choice, social structure, and political information: the informational coercion of minorities,” *American Journal of Political Science* 32 (1988), 467–82. Huckfeldt and Sprague found that citizens who hold a minority view generally cannot avoid being exposed to opposing opinions.

<sup>34</sup>See Cass Sunstein, “Political equality and unintended consequences,” *Columbia Law Review*, 94 (1994), 1390–1414.

<sup>35</sup>Marion R. Just, Ann N. Crigler, Dean E. Alger, Timothy E. Cook, Montague Kern, and Darrell M. West, *Crosstalk: Citizens, Candidates, and the Media in a Presidential Election* (Chicago: University of Chicago Press, 1996), p. 235. Admittedly, “considered judgments” as measured by Just and her colleagues is much less demanding than the type of justifications deliberativists seek. Specifically, Just et al. say a consideration may include, “noting and ignoring information,” “wondering about its implications,” and “hypothesis testing in which the old theory is judged against new information” (p. 23). It may be a rough measure, but clearly where people have thought more about their voting decision, reasons are more likely to follow. Again, this area would benefit from more empirical research.

the ability and willingness of people to talk about the campaigns and candidates is closely linked to the richness of the political information environment, as measured simply by the amount of news and ads in the locale. Given citizens' haphazard and often inadvertent ways of encountering information, the more information available, the greater the chance it will get through.<sup>36</sup>

Third, deliberation requires a particular content of political communication. In *Democracy and Disagreement*, Gutmann and Thompson outline standards for deliberating, which they call "principles of accommodation." Fundamentally, these standards require deliberators to maintain a "favorable attitude toward" and seek to "constructively interact with" one another.<sup>37</sup> This means they must remain open to the possibility of changing or modifying their positions and generally avoid moral dogmatism of any kind. Examples of the latter, which Gutmann and Thompson provide, are "Either you're for killing babies or you're against it" or, conversely, "Either you're for the freedom of women or you're against it."<sup>38</sup> The two principles that are most relevant to the campaign context are "civic integrity" and "civic magnanimity." The former requires consistency in speech (and action once a candidate gets elected), which serves as a "sign of political sincerity."<sup>39</sup> It also requires that the moral positions of a candidate or citizen be consistent with one another. For example, a person should not oppose the death penalty out of respect for human life and then fail to support policies that ensure prisoners are adequately housed and cared for. Second, civic magnanimity requires that politicians and citizens acknowledge the moral status of those with whom they disagree and refrain from claiming that another position is politically motivated in an effort to dismiss it. This means candidates and citizens must engage the arguments of others, try to understand them, and offer reasons for why they agree or disagree with them.

Gutmann and Thompson offer two other principles that are relevant in a campaign context. The first is publicity, which requires that candidates publicly offer reasons for the positions taken.<sup>40</sup> As discussed earlier, it is not enough for a candidate to simply say, "I stand for X" and then leave it up to voters to make a choice based on whether they agree with that position. According to Gutmann and Thompson, by offering reasons, politicians sustain the legitimacy of the system and contribute to the "broadening of moral and political perspectives."<sup>41</sup> Moreover, providing reasons helps clarify the nature of disagreements and may encourage people to change or modify their positions. Merely stating one's position provides no such impetus for change. The final principle is

<sup>36</sup>Ibid., pp. 235–6.

<sup>37</sup>Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Harvard University Press, 1996), p. 79.

<sup>38</sup>Ibid., p. 80.

<sup>39</sup>Ibid., p. 81.

<sup>40</sup>Testing one's reasons hypothetically using some kind of thought experiment is not acceptable either.

<sup>41</sup>Ibid., p. 100.

accountability, which requires candidates to address the claims and concerns of all those who may be significantly affected by a policy.<sup>42</sup>

Many deliberativists, including Gutmann and Thompson, constrain the types of reasons that people offer when they deliberate to those that are mutually acceptable by all participants. In practice, this means that reasons which are based on a worldview that others do not share—especially a religious worldview—cannot be offered. Obviously, this is the most controversial part of such theories. Sidestepping the issue of whether or not such claims should be excluded from public debate, I want to focus on the practicality of such constraints, particularly in the context of a making a voting decision. It is an extraordinary demand in a modern mass society to ask citizens—especially average voters—to constrain the justifications for the positions they hold in such a manner. It is enough of a challenge to get them to offer any justifications at all. James Fishkin is one deliberativist who has tackled the issue of how to increase deliberation—or at least the appearance of deliberation—in a mass society. Partly as a consequence, his requirements for deliberation are much less stringent than Gutmann and Thompson’s. Fishkin starts with Jurgen Habermas’ description of an “ideal speech situation,” in which the resolution of any question is determined by “the force of better argument,” and argues that the best we can hope for is some “incomplete” version of this.<sup>43</sup> He explains,

When arguments offered by some participants go unanswered by others, when information that would be required to understand the force of the claim is absent, or when some citizens are unwilling or unable to weigh some of the arguments in the debate, then the process is *less deliberative* than [an ideal speech situation]. In practical contexts, a great deal of incompleteness must be tolerated.<sup>44</sup>

Fishkin then focuses on the importance of engaging the arguments offered by others and providing reasons—*any reasons*—to back up claims. Unlike Gutmann and Thompson, Fishkin does not argue that the goal of deliberation is more agreement, but rather, a more informed citizenry that could offer reasons if pressed. Taken together, however, these scholars offer us a set of standards for judging the content of political communication in a campaign. Specifically, it must do the following:

1. Contain reasons for positions taken
2. Be consistent
3. Be civil
4. Engage the arguments of others
5. Speak to the concerns of all constituents.

<sup>42</sup>Ibid., p. 129.

<sup>43</sup>Fishkin, *Voice of the People*, p. 40.

<sup>44</sup>Ibid., p. 41 (his emphasis).

All of these criteria, except for the last one, should apply to citizens as well as representatives whenever they are discussing or debating a public policy issue or their vote choice.

In the next section, I briefly consider how the rules and regulations that structure electoral competition, including electoral law, how campaign finance is regulated, how district lines are drawn, and the ease with which third parties can participate in the process can affect the information environment in political campaigns, and, consequently, can serve to enhance or undermine competition, political equality and deliberation.

### A. ELECTORAL LAW

Although scholars have studied how campaigns affect elections, none to my knowledge have addressed how elections—in terms of the rules that govern them—affect campaigns. There is no question that the rules of electoral competition shape candidate strategy and, consequently, affect both the manner in which political communication is distributed, and its content. Specifically, electoral rules also affect the number of voters who receive communication from one or more candidates and the diversity of information provided. This relationship will be of greatest concern to democratic theorists who view campaigns as an opportunity for deliberation. Of course, the creation of a rich information environment does not guarantee that there will be more discussion and debate among the electorate, but it increases the likelihood that there will be. The idea is that citizens who receive more forms of competing information will be more likely to seek out opportunities for deliberation.

Here I consider how first-past-the-post (FPTP)—otherwise known as single-member districts—and proportional representation (PR) rules affect the campaign environment.<sup>45</sup> The first issue to address—and perhaps the easiest—is which mechanism produces more information diversity for voters.<sup>46</sup> Intuitively, PR, which encourages the development of a multi-party system, seems like it would lead to the generation of more ideas in the public domain, whereas elections determined by FPTP would give rise to a two-party system, which would reduce this variety. When one takes into account how candidates strategically target political communication in a campaign, this effect becomes

<sup>45</sup>Obviously, there is a whole host of electoral mechanisms that I do not have the space to consider here. The main purpose of this discussion is to point out how certain mechanisms do in fact affect the campaign information environment.

<sup>46</sup>Although I constrain myself to a discussion of how FPTP and PR affect the campaign information environment, it should be noted that there is reason to believe PR leads to policy outcomes that are closer to the preferences of the median voter. See Douglas Rae, *The Political Consequences of Electoral Rules* (New Haven: Yale University Press, 1967); Rae, "Using district magnitude to regulate political party competition," *Journal of Economic Perspectives* 9, 1 (1995), 65–75; and Gingham G. Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven, Conn.: Yale University Press, 2000).

even clearer. Consider this model of the electorate on a left-right continuum. A and B represent two candidates whose positions roughly accord with those voters on the spectrum directly below them,



In a two-party system where the winner must get a majority, A and B will cater much of their information to the tastes of swing voters, potentially leading to a convergence in the content of information. In the case of a multi-party system, however, contested voters will appear at any point where the issue agenda of two parties meet. The illustration below shows four parties located at the points A, B, C and D on the left-right continuum.



The number of conflict areas—where two parties are competing for voters—on the model will be  $n - 1$ , where  $n$  equals the number of parties. If one assumes the parties will cater to the interests of voters in these swing areas, then you can see how a multiple party system can lead to a greater variety of ideas in the public domain.<sup>47</sup>

Now consider the issue of information distribution. There are two reasons why PR should theoretically lead to a wider distribution of information throughout the electorate. First, consider the two simple spatial models above. Under FPTP rules, the median voter receives more information than partisans because the latter can usually be counted upon to support their respective party. Citizens with marginal views comprise such a small proportion of the electorate that the two major parties may ignore them altogether. The picture looks quite different in a multiple-party system, however, because swing voters are distributed at several points across the distribution. If we are correct in assuming that candidates will target swing voters, and that there are more swing voters under a PR system, then more people will receive information under that system as well. Moreover, under a system of PR, each party is trying to maximize its vote share rather than obtain 50 per cent plus one of the votes. This means they will do a better job of mobilizing their own party members. In a two-party system, on the other hand, a party has an incentive to mobilize just enough

<sup>47</sup>Although this model seems rather simple, it is extremely difficult to predict the behavior of more than two parties. For instance, candidates A and D will definitely try to steal voters from B and C, respectively, but what will B and C do? For example, B may try to go after A's voters or it might go after C's voters, but by doing so, it risks alienating some of its own voters. B's decision would partially depend on the distribution of the electorate, but it would also depend on a whole host of other factors including the issue positions it can feasibly take in order to attract voters. Despite the difficulties of the model, it is still safe to say that a proportional representation system will encourage a greater diversity of ideas in the public domain.

partisan voters to put them over the 50 per cent mark. This is the second reason why PR may lead to a broader dispersal of campaign information.

The argument above may give rise to several objections. The first has to do with a candidate or party's ability to target the most prevalent medium for campaign advertising: television ads. In other words, given the nature of a media market in which advertisements are beamed to everyone, it is difficult to ensure that one's ad is reaching only swing voters. Yet, there is no question that candidates target voters geographically, especially in presidential elections. For instance, in 2000 neither Al Gore nor George W. Bush purchased advertising in seven states: Alaska, Arizona, Connecticut, Hawaii, Rhode Island, Utah and Wyoming. At the same time, they purchased a combined total of 35,000 gross rating points in each of the following states: Michigan, Pennsylvania, Delaware, Washington, Wisconsin, Missouri and Arkansas.<sup>48</sup> In addition, candidates are increasingly using voter lists that provide detailed information about voters, which allows them to narrowly target appeals through direct mail and phonebanking. The use of voter lists itself is nothing new, but the level of detail they now contain is.<sup>49</sup>

Given this analysis, which mechanism best promotes the values of competition, equality and deliberation in the campaign period? A less demanding "competitivist," such as Schumpeter, should not have a particular preference for FPTP or PR, since both allow for competition. Schumpeter (and many political scientists who came after him) comes down squarely on the side of majority rule, however, for reasons that are probably quite familiar to the reader: PR would "offer opportunities for all sorts of idiosyncrasies to assert themselves" and would produce "inefficient" government.<sup>50</sup>

One could argue that more demanding competitiveness, such as Issacharoff and Pildes, should be in favor of PR since it increases competition dramatically. These two scholars stop short of endorsing it, however, for practical purposes, including the fact that it is unlikely the electoral structure of the United States will change any time soon and that it is impossible to foresee the costs that may be associated with shifting from FPTP.<sup>51</sup> Issacharoff and Pildes do promote what one might call the next best thing though: fusion candidacies, an electoral

<sup>48</sup>Michael G. Hagen, Richard Johnston, and Kathleen Hall Jamieson, "Effects of the 2000 presidential campaign," paper prepared for the Midwest Political Science Association Annual Meeting, Palmer House Hilton, Chicago, April 25–28 (2002). A gross rating point (GRP) is calculated by multiplying the percentage of a media market that is expected to see an ad by the number of times it is expected to see it. This means each viewer in the swing states mentioned above was expected to see 350 Bush and Gore ads during the course of the campaign.

<sup>49</sup>Dennis W. Johnson, *No Place for Amateurs: How Political Consultants are Reshaping American Democracy* (New York: Routledge, 2001), p. 150.

<sup>50</sup>Schumpeter, *Capitalism, Socialism and Democracy*, p. 272.

<sup>51</sup>Issacharoff and Pildes, "Politics as markets," p. 679. This is not a wholly satisfactory response. Many countries have successfully transitioned from FPTP to PR systems. Most recently, in 1993, New Zealand voters approved a referendum to change to PR by 54 per cent to 46 per cent. At the local level in the United States, more than 100 cities and counties have shifted from winner take all systems to semi-proportional systems (Amy, *Real Choices/New Voices*, pp. 4–5).

mechanism that enables two parties to endorse the same candidate. According to Peter Arsinger, fusion candidacies, which enjoyed their heyday in the last few decades of the eighteenth century, “helped maintain a significant third party tradition” by guaranteeing that dissenting votes were not wasted and that third party leaders had a chance of gaining office.<sup>52</sup> The two major parties recognized fusion candidates as a threat, however, and successfully challenged them in the courts. In *Timmons v. Twin Cities*, the Supreme Court upheld the constitutionality of such prohibitions, so fusion candidacies will remain a thing of the past unless the Court’s thinking on the subject changes.<sup>53</sup>

Scholars concerned about political equality in general may prefer PR because it is more likely to lead to minority representation,<sup>54</sup> but it is less clear which electoral mechanism creates the preferred campaign information environment described above. Recall that ensuring political equality in the campaign context requires that voters receive the same amount of information from each candidate. Neither FPTP nor PR systems perform particularly well in this respect, however. The problem is that both systems create incentives for candidates to communicate only with their supporters and potential swing voters. Diehard partisans, in fact, are likely to be ignored altogether by opposing candidates and parties. Other types of campaign reform, such as giving candidates free air time, seem like the best way of ensuring that information reaches voters with whom the parties have fewer incentives to communicate.

Deliberative theorists, however, should have a clear preference for proportional representation because of the information diversity it generates, as well as the distribution of information it creates. To prevent the information environment from becoming too chaotic due to an overabundance of parties clamoring for voter attention, deliberativists might be inclined to argue for more stringent requirements with regard to third-party qualification. In terms of information dispersal, deliberativists should favor PR because it is more likely that information will be evenly distributed throughout the electorate. This is the case not only because there are more swing voters, but because the goal of maximizing one’s vote share rather than of simply attracting just enough votes to win leads to wider information dispersal. For these reasons, PR would seem to go further toward ensuring the type of information environment that theorists concerned about deliberation seek.

One theorist has offered an additional reason for why deliberativists should favor PR. Thomas Christiano argues FPTP rules encourages candidates or parties to be ambiguous in their speech in order to appeal to as many voters as possible.<sup>55</sup>

<sup>52</sup>Ibid., pp. 288–9.

<sup>53</sup>520 S.Ct 351 (1997). For an analysis of the Court’s reasoning in this case, see Issacharoff and Pildes, “Politics as markets,” pp. 683–6.

<sup>54</sup>See Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (New York: Free Press, 1994).

<sup>55</sup>See also Kenneth A. Shepsle, “The strategy of ambiguity: uncertainty and electoral competition,” *American Political Science Review*, 66 (1972), 555–68.

Politicians under such a system can also be fearful of speaking too much lest they say something that angers potential supporters. These characteristics of FPTP may hinder substantive discussion. In contrast, Christiano argues that a PR system offers fewer incentives for being vague:

Being clear about what one stands for carries less risk since one need not appeal to everyone in order to get a seat in the legislative assembly. And there are usually more political parties . . . so it is necessary to be more articulate about one's aims in order to distinguish oneself from others.<sup>56</sup>

Admittedly, many of these claims are hypotheses that would benefit from the attention of empirical scholars. It is clear, however, that electoral procedures structure the campaign information environment in ways that bolster or undermine important political values, and the evidence discussed suggests that PR systems, in particular, enhance both competition and deliberation.

## B. CAMPAIGN FINANCE REGULATION

What do the values of competition, equality and deliberation mean for the structure of campaign finance regulation? When assessing these three elements, we should keep in mind what these different political values demand of the campaign information environment. There are essentially four issues related to campaign finance that need to be addressed: how the regulatory scheme should apply to all election participants, whether that scheme should include or permit public financing (either total public financing or the provision of some kind of “floor”), spending limits, and soft money. Theorists concerned about political equality should be the most demanding in terms of campaign finance reform, since they argue all candidates should have an equal opportunity to make their case to the public. Scholars concerned about competition, on the other hand, are focused on removing anticompetitive barriers and ensuring that non-incumbents are more viable in the electoral arena. In the name of diversity, deliberativists should seek to enhance third-party participation, but they should also be apprehensive about reducing the overall volume of campaign information too much, since they are concerned about the ability of people to develop considered judgments about candidates.

### i. *Barriers to Entry*

Any of the political values that I have discussed thus far provides a reasonable foundation for arguing that the campaign finance regulatory system should not discriminate against any candidate for office. Theorists concerned about equality should object to treating any parties or candidates differently than others, while

<sup>56</sup>Thomas Christiano, *Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder, CO: Westview Press, 1996), p. 259. For another discussion of the benefits of PR for public debate and discussion, see Amy, *Real Choices/New Voices*, pp. 179–82.

deliberativists should be interested in enhancing third party participation in the name of creating greater information diversity. Scholars concerned about competition should object to any anticompetitive barriers for obvious reasons. Yet, the current regulatory system has a number of such barriers. For example, Steven Rosenstone and his colleagues provide a comprehensive analysis of the many ways in which the Federal Election Campaign Act (FECA) discriminates against third parties, particularly at the presidential level. Not only do the major party candidates get lump sums for their campaigns, but the major parties receive additional money for their conventions. In contrast, third-party candidates cannot receive any campaign finance funds until *after* the election and only if they have appeared on the ballot in at least ten states and received at least 5 per cent of the national vote. Such provisions lead Rosenstone to conclude, “The FECA is a major party protection act.”<sup>57</sup> Issacharoff and Pildes draw the same conclusion and, as a result, demand that the courts strike down such laws on the grounds that they diminish competition in the political market.

## ii. *Public Financing and Spending Limits*<sup>58</sup>

The second issue to consider with regard to campaign finance reform is whether regulation is desirable at all. Some scholars argue it is futile to regulate campaign finance because money in campaigns has a will very much like water behind a leaking dike—if you plug one hole, it will inevitably find others. Citing the fact that enforcement actions are disproportionately directed at individuals and organizations who cannot afford the specialized staff required to deal with complex reporting laws, opponents also argue that regulation favors insiders who have learned how to—or can employ staff who know how to—navigate the regulatory system.<sup>59</sup> Still others contend that the regulatory regime created by *Buckley v. Valeo* favors the wealthy over the working class because it allows individuals to spend as much of their personal wealth as they like, but limits the amount of money that organizations and individuals, who are concerned about the working class and poor, can give.<sup>60</sup>

<sup>57</sup>Rosenstone et al., *Third Parties in America*, p. 26.

<sup>58</sup>Campaign finance regulation also takes the form of contribution limits, which are almost always implemented with the goal of preventing corruption or the appearance of corruption. It is undeniable that this is a goal of paramount importance, but it is more relevant for what goes on after a campaign, i.e., after a candidate has been elected than for the actual campaign itself. Since the focus of this essay is on the campaign period and how campaign finance regulation affects the campaign environment, I focus on public financing and spending limits.

<sup>59</sup>Bradley A. Smith, “Campaign finance regulation: faulty assumptions and undemocratic consequences,” *Political Money: Deregulating American Politics*, ed. Annelise Anderson (Stanford, Calif.: Hoover Institution Press, 2000), pp. 59–64. One example of how ordinary citizens can get tripped up by the regulatory system is Margaret MacIntyre, an Ohio housewife, who was fined for distributing homemade campaign literature outside of a public meeting. Instead of signing the brochures with her name as required by Ohio law, she signed them, “Concerned Parents and Taxpayers”. The Supreme Court overturned the conviction seven years later. See *MacIntyre v. Ohio Elections Commission*, 67 Ohio St.3d 391 (1993) and 115 S.Ct 1511 (1995).

<sup>60</sup>*Ibid.*, p. 63.

Scholars more frequently contend, however, that campaign finance regulation is necessary. Before I consider public financing and spending limits through the lenses of competition, equality and deliberation, however, I want to briefly review some of the empirical research on these regulatory mechanisms. First, in the post-*Buckley* era, public financing and spending limits are frequently found together because the Court struck down mandatory spending limits as an infringement on the First Amendment. Consequently, spending limits can only be implemented if a candidate voluntarily agrees to them, and public financing is now chiefly viewed as the preferred incentive for encouraging candidates to do so.<sup>61</sup> These two mechanisms, however, affect the campaign environment quite differently: while publicly financed “floors” help challengers by guaranteeing that they can communicate at a minimal level with voters, many scholars believe spending limits actually hurt challengers because they prevent them from raising the large sums of money they need to overcome the overwhelming advantage enjoyed by incumbents.<sup>62</sup>

Theorists concerned about competition, political equality and deliberation should all recognize the benefit of providing a funding floor for candidates in an election. Doing so increases the viability of third parties, helps equalize candidate resources, and creates a richer information environment both in terms of information diversity and quantity. The benefits of spending limits are less clear. The most enthusiastic supporters of such limits should be scholars concerned about ensuring absolute parity among candidates in terms of their ability to communicate with voters. Competitivists and deliberativists should be more wary of spending limits, however: the former should be hesitant to endorse them because it is unclear whether they help challengers, while the latter should find them suspect because they may significantly decrease the overall amount of information available to citizens. The same concern of these theorists should hold for full public financing, since equalizing campaign expenditures at a low level would be problematic for the same reasons.

### iii. *Soft Money*

How would a ban on “soft money”—contributions that are essentially raised outside the restrictions of federal law with the intention of influencing election outcomes—affect the political values of competition, equality and deliberation? The Bipartisan Campaign Finance Reform Act (BCFRA) that George W. Bush

<sup>61</sup>Frank J. Sorauf, *Inside Campaign Finance: Myths and Realities* (New Haven: Yale University Press, 1992), p. 152. Sorauf argues that public funding is no longer viewed as an end in itself but as simply a means to the goal of limiting campaign spending. He points out that this has led to the somewhat bizarre development that in the post-*Buckley* era, “the policy goal of limiting expenditures [has] ranked higher than the goal of replacing interested private money.”

<sup>62</sup>Jacobson, *Politics of Congressional Elections*; Thad Kousser and Ray La Raja, “The effect of campaign finance laws on electoral competition: evidence from the states” *Policy Analysis* 426 (February 2002). For a different take on the effects of spending limits, see Donald Philip Green and Jonathan S. Krasno, “Salvation for the spendthrift incumbent: reestimating the effects of campaign spending in House elections” *American Journal of Political Science*, 32 (1988), 884–907.

recently signed into law includes such a provision. According to its sponsors, the primary purpose of the soft money ban is to reduce corruption or the appearance of corruption created by unlimited contributions flowing to the national parties.<sup>63</sup> Corruption undermines equality more than any other political value because it allows certain corporations, interest groups, or wealthy individuals to have more influence on the political process than others. By banning soft money then, a major source of inequality in the political process may be eradicated. Such a ban should also bolster competition because soft money flows exclusively to the two major parties. In the 2000 presidential election cycle, the Democrat and Republican parties raised and spent approximately \$500 million in soft money.<sup>64</sup> Soft money allows parties to spend money far beyond the constraints of contribution and coordinated expenditure limits (often referred to as “hard” money). For example, in the 2002 South Dakota U.S. Senate race, the Democratic or Republican Party committees were allowed to contribute \$17,500 to their candidates’ campaigns and another \$71,820 in coordinated expenditures for a total of \$89,320 on each side. The Democrats spent an additional \$6.6 million in soft money, however, and the Republicans another \$5.5 million.<sup>65</sup> A third-party candidate in such a race simply does not stand a chance of being heard. If the courts uphold the soft money ban and parties do not find a way to circumvent it—both very strong “ifs”—then both political equality and competition would very likely be served. In terms of deliberation, there is no question that a ban on soft money would reduce the amount of information in the campaign environment, but as I discuss in the “Negative Advertising” section below, the quality of the information that would be lost is poor in many respects. Consequently, deliberativists should not be as alarmed about the ban as one might think.

### C. REDISTRICTING

The work of empirical scholars suggests that the key to ensuring that voters are exposed to a rich information environment is creating competitive districts. In their study of U.S. Senate races between 1988 and 1992, Kim Kahn and Patrick Kenney found that the competitiveness of a race was the most important factor in determining the amount of news coverage received by voters. For example, a highly competitive race in North Carolina between Jesse Helms and Mayor Harvey Gantt generated over 200 articles in the largest circulating newspaper in North Carolina from early September to Election Day. In contrast, a non-competitive contest in 1998 between Senator Daniel Patrick Moynihan and Robert McMillan generated just 17 articles in New York’s *Daily News* during

<sup>63</sup>*Federal Register*, vol. 67, no. 145. Mon. July 29, 02. Rules and Regulations. 49088.

<sup>64</sup><http://www.fec.gov/press/051501partyfund/051501partyfund.html>.

<sup>65</sup>David B. Magleby and J. Quin Monson, “The last hurrah? Soft money and issue advocacy in the 2002 Congressional elections,” <http://www.byu.edu/outsidemoney/2002congress/hurrah.pdf>.

that time period.<sup>66</sup> The fact that Bush and Gore purchased a combined total of 35,000 gross rating points of political advertisements in key battleground states and zero in a handful of states where one of the candidates was sure to win also demonstrates the importance of competition for generating a high volume of information for voters.

Although there is little that can be done about increasing competition in non-battleground states short of jettisoning the Electoral College,<sup>67</sup> at almost all other levels of electoral politics the key to bolstering competition is redistricting. Issacharoff and Pildes argue that the courts should intervene when partisan gerrymandering of reapportionment plans has undermined political competition. It may be more realistic, given the difficulty of challenging gerrymandering on such grounds,<sup>68</sup> to encourage the establishment of independent commissions to oversee redistricting, as six states already have.<sup>69</sup> Although there has been no systematic study of how reapportionment by independent bodies affects the competitiveness of districts, anecdotal evidence suggests that these commissions work. For example, in Iowa where redrawing congressional boundaries is left to non-partisan technocrats, four of the five House seats were highly competitive in 2002, whereas only 10 per cent of the seats nationwide were.<sup>70</sup>

#### D. SOME MORE THOUGHTS ON THIRD-PARTY PARTICIPATION

In addition to the reasons that have been given thus far for enhancing third-party competition, deliberativists have additional reasons for supporting their advancement. In the short term, their presence may diversify the information available to citizens in a campaign, which may help them refine their position on candidates and/or issues. Moreover, many scholars have pointed out that they have historically been the source of important policy innovations, including

<sup>66</sup>Kahn and Kenney, *The Spectacle of U.S. Senate Campaigns*, pp. 19–20.

<sup>67</sup>Even then, scarcity of resources would force candidates to advertise in media markets serving larger audiences. If we can assume that people in major media markets currently get more information than people in smaller ones, this suggests, in terms of information distribution, we may be better off with the Electoral College which structures presidential campaigns in such a way that candidates must give their attention to states that might receive little attention otherwise. Of course, there may be a whole host of other reasons, unrelated to the campaign information environment, to get rid of the Electoral College.

<sup>68</sup>Daniel Hays Lowenstein, “Bandemer’s gap: gerrymandering and equal protection,” *Political Gerrymandering and the Courts*, ed. Bernard Grofman (New York: Agathon Press, 1990), pp. 64–116. In *Davis v. Bandemer*, 478 U.S. 109, 110 (1986), the Court held that an electoral system violates the standard only if “it will consistently degrade a voter’s or a group of voters’ influence on the political process as a whole.”

<sup>69</sup>The states are Alaska, Arkansas, Colorado, Missouri, Ohio and Pennsylvania. Eight other states use independent commissions to revise congressional and legislative districts, including Arizona, Hawaii, Idaho, Maine, Montana, New Jersey, Rhode Island and Washington. For two cogent defenses of this proposal, see Dennis Thompson, *Just Elections* (Chicago: University of Chicago Press, 2002) and Samuel Issacharoff, “Gerrymandering and political cartels” *Harvard Law Review*, 116 (2002), 593–648 at p. 593. For a defense of bipartisan gerrymandering, see Nathaniel Persily, “In defense of foxes guarding hen houses” *Harvard Law Review*, 116 (2002), 649–83.

<sup>70</sup>“Rigged voting districts rob public of choice,” *USA Today* (August, 28, 2002), p. 13A.

women's suffrage, the direct election of senators and the graduated income tax.<sup>71</sup> Rosenstone and his colleagues argue that this is precisely what makes third parties so important. He writes,

the power of third parties lies in their capacity to affect the content and range of political discourse, and ultimately public policy, by raising issues and options that the two major parties have ignored.<sup>72</sup>

Despite the important role they play in creating a richer political discourse, deliberativists do not usually promote the inclusion of third parties to the extent that they should. For example, Bruce Ackerman and James Fishkin argue that the agenda for "Deliberation Day" should be set by asking the two major candidates, "What are the two most important issues presently confronting the country?"<sup>73</sup> Moreover, their plan relies heavily upon community and opinion leaders with "ties to the major parties."<sup>74</sup> This is understandable to a certain extent: it is difficult enough to keep a day-long conversation on political issues focused without introducing the agenda of minor parties. When one considers the overall quality of the political information environment prior to an election and the effect third parties may have on the long-term political discourse of the country, however, this view is less defensible.

## E. PROMOTING DELIBERATION

The final issue to consider is dear to the hearts of deliberativists: the promotion of opportunities that allow for discussion and interaction between citizens and, when possible, between citizens and their representatives. Deliberativists should naturally prefer occasions which allow for two-way interaction between voters and public officials, like town hall meetings, door-to-door contact, radio call-in shows, or more ideally, opportunities like Ackerman and Fishkin's "Deliberation Day." For the most part, however, interaction between candidates and voters can occur only at the local level, and even then quite rarely. The fundamental problem for deliberativists then is how to increase serious discussion in a mass democracy.

A handful of scholars have wrestled with this problem and their solutions might be considered "deliberative shortcuts," that is, events that involve deliberation among randomly selected samples of the population and whose outcomes are to be viewed by average citizens as an indication of how they would vote if they had an opportunity to deliberate. Fishkin's "Deliberative Poll" is perhaps the best known of such reforms. It involves transporting a random sample of the nation to a single place, immersing them in a discussion of issues

<sup>71</sup>Rosenstone et al., *Third Parties in America*, p. 8.

<sup>72</sup>Ibid.

<sup>73</sup>Ackerman and Fishkin, "Deliberation day," 135.

<sup>74</sup>Ibid., p. 139.

for a weekend, and polling them at the end to see what their opinions are. Fishkin says the purpose of such a poll is to enable a microcosm of the country to make recommendations to everyone else after it has had the chance to think through a set of issues. He claims, “If such a poll were broadcast before an election or a referendum, it could dramatically affect the outcome.”<sup>75</sup> Fishkin has conducted numerous polls around the world, often in conjunction with major media organizations, such as the MacNeil/Lehrer Productions and Britain’s Channel 4, and studies have demonstrated that deliberative polling does change the attitudes of participants. Despite this media interest and deliberative polling’s attitudinal effects, no work has assessed whether the polls are having the widespread effect they were intended to have—that is, whether they are in fact being used as deliberative shortcuts by ordinary citizens. Another example of such an approach is John Gastil’s “citizen panel,” which is composed of randomly selected individuals from the population who deliberate about issues, candidates, and ballot initiatives before an election and whose recommendations are summarized, included in voter guides, and printed on the ballots themselves.<sup>76</sup> Gastil argues that the doing so allows the average voter to “simulate” deliberation about major issues and candidates.<sup>77</sup> The strength of such proposals is that they fully recognize the difficulty of increasing deliberation in a modern mass society. More work needs to be done, however, to determine whether these proposals do or can have a larger effect on the populace.

### III. ASSESSING CAMPAIGN STRATEGIES

In addition to analyzing how political institutions and political communication in campaigns affect the values of competition, political equality and deliberation, it is also important to consider how these values are affected by the actual practices and strategies candidates use to get elected. Several practitioners have attempted to develop frameworks for thinking about “campaign ethics,” but few of them are systematic and almost none of them draw upon democratic values.<sup>78</sup> In this section, I return to the issue of negative campaigning and evaluate it in light of the previous discussion.

There is a tendency among scholars, including many political theorists, to lump all political advertisements together and condemn them resoundingly—some have even called them “worthless”<sup>79</sup> and “moronic.”<sup>80</sup> Some empirical

<sup>75</sup>Fishkin, *The Voice of the People*, p. 162.

<sup>76</sup>John Gastil, *By Popular Demand: Revitalizing Representative Democracy Through Deliberative Elections* (Berkeley: University of California Press, 2000).

<sup>77</sup>*Ibid.*, p. 152.

<sup>78</sup>For an example, see Wilma Goldstein, “The ethics of political campaigns,” *Campaigns and Elections American Style*, ed. James A. Thurber and Candice J. Nelson (Oxford: Westview Press, 1995), pp. 192–9.

<sup>79</sup>George Kateb, “The freedom of worthless and harmful speech” *Liberalism Without Illusions*, ed. Bernard Yack (Chicago: University of Chicago Press, 1996), pp. 220–40.

<sup>80</sup>Dworkin, *Sovereign Virtue*, p. 367.

scholars, however, have argued that many ads do in fact contain useful information and that we should strive to make a distinction between “attack” ads and those that have substantive content.<sup>81</sup> There is no question that the information contained in most ads falls short of the kind of content deliberativists seek, since they rarely contain substantive reasons for positions taken. Yet political advertisements are a permanent feature of the electoral landscape, so the best approach is to determine what is redeeming about them and to develop mechanisms that enhance these more redeeming features.

Kathleen Hall Jamieson and her colleagues argue that what many call “negative advertising” actually conflates two types of advertisements. The first are those that focus predominantly on the opponent and for that reason are called “attack” ads. The second are “contrast” ads, which contain both reasons to vote for the sponsoring candidate and reasons to vote against the opponent. The other category of ads solely contains advocacy information about the sponsoring candidate and makes no reference whatsoever to the opponent. Jamieson and her colleagues find that attack and contrast ads contain more policy content and are generally more substantive than advocacy ads, which should give some solace to deliberativists.<sup>82</sup> Attack ads, however, by their very nature frequently have a more negative tone, which undermines the civility deliberativists seek in political discourse. All of this suggests that theorists concerned with deliberation should endorse contrast advertisements, especially when they provide reasons like the advertisement below from the 1998 gubernatorial race in California, which features the Democratic candidate Gray Davis speaking directly into the camera:

Davis: I'm Gray Davis. One of the most important differences in this election is about a woman's right to choose. I'm pro-choice. My opponent is not. In Congress he sponsored legislation to outlaw abortion even in cases of rape and incest. I think a decision this personal is best made by a woman in concert with her doctor and her own conscience. And I trust a woman to make that decision. As governor, I'll fight to make sure women have that choice.

This is an example of an advertisement that clearly lays out the policy differences between candidates, and provides reasons for why the candidate takes the position that he does. Moreover, Davis appears in the ad for its entire duration making it absolutely clear who is responsible for creating the commercial. Many

<sup>81</sup>Kathleen Hall Jamieson, Paul Waldman and Susan Sherr, “Eliminate the negative? Categories of analysis for political advertisements” *Crowded Airwaves: Campaign Advertising in Elections*, James A. Thurber, Candice J. Nelson and David A. Dulio, eds. (Washington D.C.: Brookings Institution Press, 2000), pp. 44–64; Larry Bartels et al., “Campaign reform: insights and evidence,” <http://www.wws.princeton.edu/~lbartels/campaignreform/>. But even after making such distinctions, we should not be too quick to focus our wrath on attack ads, since a study of political ads between 1952 and 1996 by the Annenberg School of Communication found that such ads often contain the greatest number of references to policy, suggesting that voters may actually learn something about candidate policy preferences from attacks ads.

<sup>82</sup>Jamieson et al., *ibid.*

political observers characterized this ad as an “attack,” but this is precisely the kind of contrast ad that deliberativists should promote.

How do we encourage candidates to create contrast advertisements? According to political communication scholars, candidates who are enjoying a substantial lead in the polls are more likely to run positive advertisements. Both contrast and attack advertisements increase as the race election’s outcome becomes less certain, suggesting that making races more competitive will lead to more substantive political communication. But how do we prevent the increase in negativity that will inevitably accompany more competitive races? This is a difficult question but one suggestion is to require candidates to appear in their ads for a substantial portion of their duration—perhaps half of the ad.<sup>83</sup> The reasoning behind this proposal is that studies have shown candidates tend to “disappear” from their ads when they take on a more negative tone, since they do not want their names to be associated with attacks.<sup>84</sup> Forcing candidates to take more responsibility for the content of their commercial by actually appearing in it, rather than simply including the name of their campaign committee in the ad, may improve its tone.

Of course, such requirements would not work for “issue advocacy” advertisements, which tend to be more negative than candidate ads.<sup>85</sup> The Bipartisan Campaign Reform Act actually bans the airing of such ads when they make a clear and unambiguous reference to a federal candidate. The ban is one provision of many that opponents of the BCRA are currently challenging in court, but if it does hold, the question is whether it would be a positive development for campaign deliberation. For starters, the amount of political information in campaigns would be drastically reduced. In 1996, for example, the Annenberg School of Communication estimates that one-third of the \$400 million spent by federal candidates on television were issue advocacy ads.<sup>86</sup> If more is better in terms of political information, as I have argued, is not the ban a bad idea? The answer to that question hinges on the type of information issue advocacy ads provide. Such ads tend to be not only more attack-oriented, but more misleading, and less specific about issues. In fact, one scholar has suggested that we call them “non-issue ads.”<sup>87</sup> Moreover, the sponsors of such ads tend to hide behind innocuous sounding names, making it impossible to hold them accountable for their content. For instance, in the 2002 congressional election cycle, the most active issue advocacy group on television was the “United Seniors

<sup>83</sup>The BCRA requires candidates to appear in their ad or include an image of themselves in it, but does not stipulate any length of time.

<sup>84</sup>Kathleen Hall Jamieson, *Dirty Politics: Deception, Distraction and Democracy* (New York: Oxford University Press, 1992), p. 227; and Roderick P. Hart, *Campaign Talk: Why Elections are Good for Us* (Princeton, NJ: Princeton University Press, 2000), p. 137.

<sup>85</sup>See Darrell M. West, “How issue ads have reshaped American politics” *Crowded Airwaves: Campaign Advertising in Elections*, ed. James A. Thurber, Candice J. Nelson, and David A. Dulio (Washington D.C. Brookings Institution Press, 2000), pp. 149–69.

<sup>86</sup>West, *ibid.*, p. 153.

<sup>87</sup>*Ibid.*, p. 155.

Association.” The group, which spent \$4.5 million on their spots, was funded almost entirely by the pharmaceutical industry.<sup>88</sup> In addition, issue advocacy ads are most often aired in highly competitive races, so the overall reduction of information would only occur in states that already have an extremely high amount of such information flowing to voters. This fact, combined with the quality of information contained in issue advocacy ads, and the lack of accountability for them, should make deliberativists less concerned about the BCRA’s ban if the courts decide to uphold it.

Deliberativists need to be less dismissive of political ads because they do play an important educational role in campaigns. Moreover, dismissing them, rather than determining what is redeeming about them and how they can be reformed, serves no other purpose than to remove the voice of deliberativists from the debate over political ads, which hardly aids their cause.

#### IV. CONCLUSION

Reflecting back upon the three political values discussed in the first section, what stands out is that each forces us to examine a different part of the campaign process. Enhancing political competition requires us to focus on how electoral law and campaign finance regulation structure the political market. Concerns about equality turn our attention to the campaign information environment and oblige us to consider whether candidates have an equal chance to make their cases to voters. Deliberation forces us to balance the need to give candidates an equal opportunity to communicate their opinions with the need to maintain a rich information environment, which entails both a diversity of viewpoints and a high volume of information. Moreover, deliberation underscores the need to create opportunities for citizens to discuss politics, and when that is not possible, to create shortcuts that enable citizens to make political decisions as if they had deliberated (for example, deliberative polls). This suggests that there may be a tension between increasing equality and deliberation in political campaigns at times. The only solution is to be aware that such a tension exists and to clearly understand, whatever the ultimate policy decision is, how one value is being enhanced at the expense of another.

Another insight that has emerged from this analysis is that one class of reforms seems to further all of the values elaborated above to a certain extent: increasing competition. Doing so advances the interests not only of competitivists, but of egalitarians who are concerned about agenda-setting and the possibility of any party or individual’s developing a monopoly (intentionally or by default) on information provision in a campaign, as well as deliberativists who desire a rich information environment in the interest of citizens developing well-informed opinions. This does not mean that none of the other reforms discussed have

<sup>88</sup>Magleby and Monson, “The last hurrah?” p. 1.

merit, but simply that one class of reforms has the potential to enhance a number of democratic values at the same time. If this conclusion is correct, then the fact that the number of competitive congressional districts has dwindled from 151 in 1992 to 44 in 2002 should be cause for alarm.<sup>89</sup>

Competitiveness is disappearing at the state and local level as well. In California, the 2000 redistricting process ended in a Democrat and Republican deal whereby the former retained their hold on the state legislature in exchange for guaranteeing that Republicans would not lose any more Congressional seats as the state's demographics change in the next decade. As a consequence, of the more than 150 seats at stake in California for the state Senate, state Assembly, and the House of Representatives, analysts predict that no more than 10 will be genuinely competitive over the next ten years.<sup>90</sup> As I have argued in this essay, the implications of this fact are staggering for democratic theorists of all stripes—not just those who are concerned specifically about competition.

<sup>89</sup>Ibid.

<sup>90</sup>Carl Ingram and Jean Merl, "Safe seats mean few voters get real choice," *Los Angeles Times* (October 27, 2002), part 2, p. 13.

Copyright of Journal of Political Philosophy is the property of Blackwell Publishing Limited and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.