



The Puzzle of Interest Group Electioneering

October 11, 2000, was typical of most days in the final frantic weeks before the November elections. The *New York Times* reported in its “Campaign Briefing” that Congressman Clay Shaw was attacking his opponent Elaine Bloom on prescription drugs, that Ralph Nader had given a harsh speech the previous day on vehicle safety standards, and that, of the four candidates in the previous week’s presidential and vice presidential debates, Joe Lieberman had used the “brainiest language.”¹ The *Atlanta Journal-Constitution* reported on that day that Bush was campaigning in Tennessee and winning there in the latest poll and that Gore’s Southern strategy was based on upsetting Bush in Florida.²

And on this very normal day, deep into the 2000 election, candidates, parties, and interest groups raised and spent campaign funds. The Walt Disney Corporation’s Political Action Committee (PAC) in Washington, D.C., for example, made seven candidate contributions of \$1,000 each, six to incumbent House Democrats and one to an incumbent Republican Congressman. The money used to pay for these contributions was raised in small amounts by Disney’s PAC, and the PAC abided to an upper limit in the total amount given to each candidate for that election cycle. In other words, the PAC used “hard money.” All told, almost 300 PACs contributed \$1,966,344 in hard money that day.

On the same day, the nonfederal account of the Democratic National Committee (DNC) received a check for \$80,000 from the Walt Disney Corporation in Burbank, California; the check exceeded the hard money upper limit on contributions to political parties *for an entire election cycle* by \$65,000. Because Disney delivered the check to the DNC's nonfederal account, however, this contribution was “soft,” meaning the source of the funds was neither regulated nor tracked. On October 11th, almost 300 groups of all types and sizes joined the Disney Corporation, contributing \$2,784,148 in soft money to the Democratic and Republican parties. CSC Holdings in Woodbury, New York, for example, gave \$250,000 to the Republican National State Election Committee; Collazo Enterprises in Huntsville, Alabama, contributed \$10,000 to the DNC's nonfederal corporate account; and Walco Sheet Metal Inc. in Coralville, Iowa, contributed a modest \$300 to the nonfederal account of the National Republican Congressional Campaign Committee (NRCC). Combined with hard money, interest groups contributed more than \$4.7 million on that Wednesday in October—a substantial amount for only one day.

In many ways, the fund-raising activity of October 11th was not unique. The following Monday, five days after giving \$80,000 to the DNC, Walt Disney contributed \$50,000 to the NRCC. The Eastern Band of Cherokee Indians in Cherokee, North Carolina, gave \$100,000 to the DNC, and the National Education Association contributed \$20,000 to the DNC's nonfederal Building Fund. Indeed on October 16, 2000, 169 groups contributed \$1,781,136 in soft money, adding to the \$1.5 million in hard money contributions from interest groups that day.³

Most of this money, going straight into the accounts of candidates and parties, was spent by the recipients in the days and weeks that followed, but interest groups were also spending independently of federal candidates. Hard money funded some of this activity, but a lot was paid for with unregulated interest group soft money. Between October 23rd and November 6th, for example, the National Rifle Association's Political Victory Fund—a PAC registered with the Federal Election Commission (FEC)—aired a television ad in five presidential battleground states (Michigan, Pennsylvania, Virginia, Minnesota, and Washington). Actor and gun activist Charlton Heston narrated the ad. Looking directly into the camera, he explained to viewers:

Did you know Al Gore's Justice Department argued in Federal Court that the Second Amendment gives you no right to own any firearm? The Supreme Court could be next with new justices hand-picked by Al Gore if he wins. Think what Justice Hillary Clinton or Charlie Schumer would do to your gun rights. When Al Gore's Supreme Court agrees with Al Gore's Justice Department and bans ownership of firearms, what freedom is next?

Vote George W. Bush for President.

Between October 28th and November 4th, by comparison, the National Rifle Association aired another ad in two different media markets, one of them Memphis. This time executive vice president Wayne LaPiere narrated:

Did you know that right now, in Federal Court, Al Gore's Justice Department is arguing that the Second Amendment gives you no right to own any firearm? No handgun, no rifle, no shotgun. And when Al Gore's top government lawyers make it to the U.S. Supreme Court to argue their point, they could have three new judges, hand-picked by Al Gore if he wins this election. Imagine what would Supreme Court Justice's Hillary Clinton, Charlie Schumer, and Diane Feinstein do to your gun rights? There would nothing you can do. What you think wouldn't matter anymore because the Supreme Court is the final interpreter of the Constitution. And when Al Gore's Supreme Court agrees with Al Gore's Justice Department and bans ownership of firearms, that's the end of your Second Amendment rights.

So, please call this number now to join the NRA or just find out how you can help. Thank you.

Both Heston and LaPiere make the case that Gore's election would result in a more liberal Supreme Court (even positing Hillary Clinton as a future justice), one that would threaten gun ownership. While the Heston advertisement was paid for with regulated hard money, raised in small amounts and reported to the FEC as an independent expenditure (the term for hard money spent on behalf of a

candidate but uncoordinated with the candidate), the LaPiere ad went unreported to the FEC and was classified as unregulated issue advocacy (the term for public communications that focus on public policies and avoid expressly calling for the election or defeat of a candidate). The only distinguishing characteristic of these similar ads was the presence of “vote for” in the former ad and the absence of such an explicit exhortation in the latter.

Indeed, in 2000 the presence or absence of so-called magic words—of which there are eight—“*vote for*,” “*elect*,” “*support*,” “*cast your ballot for*,” “*Smith for Congress*,” “*vote against*,” “*defeat*,” or “*reject*”—was the legal bright-line test between issue advocacy and independent expenditures. All told, interest groups in 2000 aired 77,687 television advertisements that mentioned or pictured federal candidates, and 78 percent of them (60,623 ads) aired within 60 days of the November elections. Further still, only 1,157 of interest group ads aired within 60 days used “magic words”; that’s only 2 percent.

Stories about magic words and soft money abound from the federal elections of 1996–2002. Before campaign finance reform went into effect in 2002, parties and interest groups were allowed to build unlimited war chests—in source and amount—of nonfederal soft money (which the FEC and Congress sanctioned in 1979), and they could spend these war chests on advertisements and other public communications as long as they avoided those call-to-action magic words (which the Supreme Court elucidated in 1976 in *Buckley v. Valeo*). The soft money allowance was intended to give parties leeway in mobilizing a partisan electorate and to allow both interest groups and parties the opportunity to help nonfederal candidates. Furthermore, the magic word distinction was designed to leave issue-based and nonfederal speech unregulated by federal election law.

Still, by avoiding the magic words in party-building activities, get-out-the-vote (GOTV) efforts, nonfederal electioneering, and issue-based advocacy, groups and parties could by implication spend millions of dollars in unregulated money in ways that aided or hurt federal candidates, prompting many to refer to these allowances as massive “loopholes” in election law. Indeed, the *Washington Post* editorialized that parties in the 1990s had become “addicted” to soft money in a campaign finance regime that increasingly “smelled bad.”⁴

The examples above make the *Post*’s assessment seem credible.

The unregulated anti-Gore ad by the NRA aired in a competitive market days before the election, and in a must-win state for Gore. (Indeed, Gore lost the state, and President Bill Clinton hypothesized that the NRA may have made the difference [Clinton 2004, p. 928]). And the Democrats and Republicans were free to use the soft money contributed on October 11th and 16th to fund advertising efforts in competitive Senate and House races. All of this activity occurred in an electoral context in which partisan control of the White House, the Senate, and the House of Representatives was highly contested. In 1996, for example, the Democrats needed 13 seats in the House and 3 in the Senate to regain majority control; in 1998 it was 10 in the House and 5 in the Senate; and in 2000 it was only 6 and 5, respectively. By the elections of 2002, only six seats in the House separated the Democrats and Republicans, and the Democrats held a slim one-seat control of the Senate.

While the campaign finance activity in the fall of 2000 might look similar to any typical campaign day between 1996 and 2002, it was atypical when compared to earlier elections. If we had similar comprehensive data on soft money contributions or advertising logs for every election cycle back to the early 1970s, we would see important differences.⁵ On October 11, 1992, or October 11, 1988, or October 11, 1982, we would see much smaller soft money contributions to the Democratic and Republican parties from very few contributors (and almost no soft money in the late 1970s and early 1980s). There would be fewer advertisements sponsored by interest groups and almost none that mentioned candidates or were funded with unregulated money; even the (in)famous Willie Horton ad, an interest-group-sponsored attack on presidential candidate Michael Dukakis that many believed was racist, was paid for with hard money.

And while this is not to say that groups avoided aggressively engaging elections during this time—indeed some groups spent millions in the 1980s with the goal of aiding or defeating candidates—it was in the mid-1990s when interest groups and parties began spending hundreds of millions in soft money and on public communications that specifically avoided FEC regulation (Herrnson 1998a, Magleby 2001, 2002, 2003). Noted one early analysis of issue advocacy in the 1996 elections, “This is unprecedented, and represents an important change in the culture of campaigns” (Beck, et al., 1997).

These developments, however, are puzzling. If the distinction between unregulated and regulated money is so clear (simply avoid the use of magic words), the implications obvious (millions more for electioneering), and the loopholes old (a consequence of statutes passed and court cases decided in the 1970s), why did most interest groups and political parties wait until 1995 and 1996 to use these tactics in such high numbers? What happened to make them so common? Indeed, as Parker and Coleman (2004, p. 244) note, “As far as we can discern, none of these [issue advocacy and independent expenditure] activities were prohibited at any time following the Progressive era. In theory, PACs, private persuasion efforts, and independent expenditures were every bit as legal in the 1920s as in the 1990s.”

I start with this puzzle and focus on the campaign finance regime beginning in 1974, which was part of the major governmental reforms following Watergate.⁶ I use the puzzle of the 1990s as a launching point to answer a broader question, however: *Under what conditions do interest groups adopt or change election strategies?*

Interest groups participate in elections for a variety of reasons, which scholars of PACs have debated for more than two decades. Most studies, however, examine the determinants of contributions to or expenditures for individual candidates in one or a few elections; furthermore, the key causal variables are too often static (i.e., does party, seniority, committee assignment, or district characteristics predict a contribution?). For the most part, we are left wanting a theoretical understanding of these big changes in campaign finance—that is, the dynamics of why tactics shift, expand, or emerge over time.

More broadly, in answering the larger question I advance important debates about the power of interest groups in American politics and the relationship between interest groups and political parties. Scholars traditionally assume that interest groups are concerned with narrow issue agendas, while political parties are the province of majoritarianism (Baer and Bositis 1993). In the late 1990s, however, after the Republican gains in the 1994 elections, the number of highly competitive House and Senate seats regularly exceeded the number of seats needed to shift control of each chamber. With such an electoral environment, the participation of groups and parties in a handful of races had the potential to drastically shift the policymaking environment.

Consider the electoral context of 2002. In June 2001 Vermont Senator James Jeffords—a Republican—switched parties to become an independent. Because the Senate was split 50-50 between Democrats and Republicans (with Cheney as president of the Senate), Jeffords' switch gave the Democrats a slim 50-49-1 majority. But why was party control important? After all, if we look at the median voter in the Senate, little changed because of Jeffords' actions. According to one assessment, Jeffords became slightly more liberal after switching parties, but the ideology of the rest of the chamber remained stable.⁷

However, although nothing may have changed in this ideological sense, everything changed in the partisan sense. Senator Olympia J. Snowe, a Maine Republican, summarized it best when she said, "You're talking about control of the agenda."⁸ After Jeffords became an independent, for example, Robert C. Byrd (D-West Virginia) replaced Ted Stevens (R-Alaska) as chair of Appropriations; Patrick Leahy (D-Vermont) replaced Orrin G. Hatch (R-Utah) as chair of Judiciary; Max Baucus (D-Montana) replaced Charles E. Grassley (R-Iowa) as chair of Finance; Joseph R. Biden Jr. (D-Delaware) replaced Jesse Helms (R-North Carolina) as chair of Foreign Relations; and Thomas Daschle (D-South Dakota) replaced Trent Lott (R-Mississippi) as Majority Leader. Indeed, everything changed in June 2001, the consequence of one Senator's party switch.

Because of this context, I show that many interest groups found reason to cast their lot with the electoral hopes of party entrepreneurs. These groups understood that, by helping party leaders retain or regain control of the House or Senate, policymaking rewards would follow, and perhaps to a degree far exceeding the politics of gaining access to individual legislators.

In the fall of 2002, the *Washington Post* made this pre-election assessment on the stakes of the upcoming mid-term elections:

Shifting Senate control to the GOP [in the 2002 elections] could secure priorities such as a permanent repeal of the estate tax, bigger tax deductions for business investments, elimination of the corporate alternative minimum tax and curbs on legal liability judgments. Conversely, [business groups] say, Democratic control of the House could mean higher corporate tax rates to finance Social Security and a prescription drug

benefit for Medicare, and could jeopardize the tax cut that business groups helped secure last year.⁹

Such perceptions were not unique to 2002, however. In a 1998 plea to members of the Brotherhood of Locomotive Engineers and Trainmen, Congressman Patrick Kennedy said,

We need you to remind people what's at stake in the fall elections: Do we continue to let the Republican majority cut back-room deals that sell out our nation's workers and threaten our way of life, or do we elect a Democratic majority that is committed to making right-wing extremism a thing of the past and putting working families first? Make sure that they know what a Democratically-controlled Congress would stop cold: saying "no" to bogus comp time bills; saying "no" to unfair striker replacement bills; and saying "no" to paycheck reduction efforts. Make sure they know just what a Democratically-controlled Congress would make happen: creating smaller class sizes and safer schools for our children; offering better access to quality child care and affordable health care for families; ensuring equal pay for equal work; and providing a secure retirement and improved long-term care for our seniors.¹⁰

Two years later, the president of the National Education Association wrote, in a post on the association's Web site: "A lot is up for grabs in Election 2000. The White House. The Congress. The Supreme Court. We stand to make a crucial difference."¹¹ And in 2004, the Club for Growth urged its members to take action in the presidential and congressional elections, saying: "*There's a lot at stake in the 2004 elections. Control of the White House, Senate and House of Representatives is all up for grabs. The House and Senate Republican majority—slim as it is—must be defended. We can't afford to lose that controlling stake the GOP now enjoys in Washington. We can't let Democrats like Minority Leaders Nancy Pelosi and Tom Daschle take the gavel, and control the flow of all legislation in the Congress.*"¹²

Indeed, recent controversies about Tom Delay's fund-raising strike at the very heart of the importance of majority status. Delay, former Republican House Majority Leader, was indicted in 2005 on

charges of funneling corporate contributions during the 2002 elections through his own Texans for a Republican Majority PAC (TRM-PAC) to the Republican National Committee (RNC). The RNC in turn sent contributions to Texas statehouse candidates, leading to the charge of money laundering, as corporate contributions to state candidates are prohibited under Texas election law. Those Republican candidates, whose electoral victories were presumably aided by the RNC money, delivered control of the state legislature to the Republican Party in 2002, which redrew the state's federal House districts before the 2004 elections. Court documents demonstrate that Delay's fundraising for TRMPAC was motivated to elect Republicans and had the explicit goal of redistricting.¹³ The resulting district map helped shore up Republican control in Washington, D.C., by boosting the number of Republicans from Texas by six. Delay's actions reflect a strategy of enticing corporate and individual support under a plan of ensuring long-term Republican majorities in Washington. Indeed, when majority status is at stake (and when its meaning is impactful and significant), it seems that political necessity is the mother of electioneering innovation.

The Argument

To answer the question—under what conditions do interest groups adopt or change election strategies?—my dependent variable is the observed tactics of interest groups; for example, patterns of hard money contributions, independent expenditures, voter mobilization, issue advocacy, and soft money donations. *The central argument is that to understand how interest groups engage elections in these varying ways, and to understand how this engagement has changed over time, we must comprehend how changing political and legal contexts create both opportunities and impediments for certain forms of electoral participation.*

My argument proceeds as follows. First, we know that tactical choices follow the strategic goals of interest groups (Goldstein 1999). If an interest group seeks to help elect or defeat candidates for office, it will select tactics appropriate to such a goal. We know less, however, about the source of interest group goals. Why would an interest group seek to help elect candidates? When are interest groups concerned

more with seeking access to candidates than with helping with their actual election or defeat? I argue that an interest group's position in two crucial political contexts—ideological and partisan—will significantly determine the goals it sets for its electoral participation. Liberal interest groups faced with a conservative policymaking environment (the ideological context), for example, should pursue electoral politics designed to elect new (more liberal) members. Groups that favor one party should invest more heavily in that party when partisanship drives policymaking (the partisan context). On this latter point, the elections of 1994 and the electoral stakes in each election since form the crux of this argument. Why did interest groups wait so long to adopt soft money and issue advocacy? I argue that the polarized party politics of the late 1990s was a crucial motivating factor, compelling interest groups to mobilize in alliance with party agendas.

Additionally, I argue that tactical choices are determined by interest group capacity to support or utilize certain tactics. We know, for example, that an interest group's size and political experience have a powerful influence on its tactical selection (Cyert and March 1963, Masters and Keim 1985, Walker 1991). We know less, however, about how regulatory restrictions on certain tactics limit the capacity of a group to act in certain ways and at certain times (the regulatory context). In a sense, the point is obvious; pundits and journalists often note the manner in which political actors seek to “evade” campaign finance law. Senator Mitch McConnell (R-Kentucky), a vocal opponent of campaign finance reform, compared trying to limit money in politics to “putting a rock on jello,” in that “You can squeeze it down, but it just goes in different directions”; this is similar to the more common metaphor that money in politics is like water on rock—it always finds the cracks.¹⁴ I broaden that point beyond the anecdotal, arguing that political actors generally and interest groups specifically not only “learn” about regulatory boundaries but also adopt or change tactics at moments when the regulatory community appears most willing to permit those tactics. Why did interest groups wait so long to employ issue advocacy and soft money contributions? I argue that the regulatory context simply did not give the same leeway to innovative tactics in the 1980s as it did in the mid-1990s and that this too was a motivating factor.

All told, I argue that the political demand for funds coming from this extremely partisan and polarized political context combined with

increased regulatory openness to create a “perfect storm” necessary to allow this “explosion” in interest group electioneering.

Data and Definitions

I bring to bear a diverse and unique set of data on my question. For example, I examine all soft money contributions to parties by interest groups from 1991–2002, using data from the FEC and the Center for Responsive Politics (CRP). Soft money has been largely ignored by scholars of interest groups, mostly because of data accessibility challenges, but in the six election cycles between 1992 and 2002, interest groups contributed a total of about \$1 billion to the parties’ nonfederal accounts.¹⁵

Second, I examine money given to and spent by Section 527 groups for political purposes from 2002–2004, using data from the Internal Revenue Service (IRS). These data have only become available in recent years, after Congress in 2000 passed an amendment to the Internal Revenue Code requiring 527s to disclose their contributions and expenditures. Section 527 groups are IRS-classified political organizations, a category that includes parties and PACs. Not all 527s are regulated by the FEC, however; most notably political organizations that operate below the federal level or only raise and spend soft money. In the elections of the mid-1990s, before passage of the Bipartisan Campaign Reform Act (BCRA) in 2002, 527s became a principal organizational vehicle for issue advocacy and soft money. After BCRA, high-profile 527s (such as the Media Fund, MoveOn.org, and the Swift Boat Veterans) continue to raise and spend soft money, much to the ire of campaign finance reformers; indeed, in the 2004 election, partisan 527s spent nearly \$500 million.

Third, I investigate political advertisements aired by interest groups and parties from 2000–2004, using data from the Wisconsin Advertising Project. These data are the most comprehensive available for use in tracking the most visible public communications from interest groups and parties; analyzing these data remains one of the only ways to track expenditures on issue advocacy. The Wisconsin Advertising Project has not only tracked when ads air but has also coded each unique advertisement on content and tone. Since 2000, candidates, parties, and interest groups have sponsored more than 3 million ad spots meant to influence federal elections.

Fourth, I build a number of unique datasets measuring the nature of the regulatory context. I code more than 1,200 requests from 1977–2003 made by parties, candidates, and interest groups to the FEC asking for clarification in existing campaign finance law. I code more than 300 major campaign finance court cases during the same time span, and I track more than 100 changes in regulations as mandated by Congress and as modified by the FEC. These data are an invaluable source of qualitative and quantitative information on how political actors view the regulatory context and interpret the boundaries of permissible election activity.

In addition to these rich data sources, I also examine PAC contributions to candidates and parties from 1983–2002, a time span covering 10 elections. There have been numerous studies of PAC contribution behavior, but I critique the PAC literature as suffering longitudinally—that is, in explaining disparities in contribution patterns over time and across groups. I test hypotheses about aggregate PAC behavior for each election cycle. The value of this analysis comes in lending better theory to the literature on PACs, in addition to covering a number of election cycles under different electoral conditions.

Finally, I conduct individual, semi-structured interviews with political elites at the forefront of campaign finance. Because political actors participate in a campaign finance system that is complicated legally, many interview subjects preferred to remain anonymous or on background, especially concerning questions of the regulatory context. Nonetheless, these interviews serve both to clarify my other findings and to better situate the actions of interest groups in the changing political and legal contexts.

It is also important, before proceeding, to make clear my universe, as well as my conceptualization of interest groups. Because the principal focus of this study is on election-related tactics and how interest groups choose to engage electoral politics, I am interested in all interest groups that make at least some minimal electoral investments. My question then relates to why groups in this population choose some tactics over others. By implication, such tactics include some lobbying behavior. Indeed, some election-related tactics—such as contributing to safe seat incumbents—are chiefly designed to facilitate access to policymakers. As such, my empirical investigation of money raised and spent around elections is aimed at distinguishing election tactics de-

signed to move votes from those election tactics meant to aid lobbying. I exclude from my analysis those groups that care not about elections, but care only about the writing and debating of policy (even choosing to avoid electoral politics as a lobbying tactic).¹⁶

As such, I make limited reference to what some have called the “K Street Project,” a Republican plan to reinforce the lobbying corps in Washington with Republican operatives. According to Grover Norquist, president of Americans for Tax Reform, the Project was designed to identify “how many R’s [Republicans] and D’s [Democrats] are being hired by trade associations or companies,” with the goal of giving more consistent access to those represented by pro-Republican lobbyists.¹⁷ In many ways, a study of the K Street Project would demonstrate clearly the partisan environment in Washington and the development of that environment post-1994. With that said, my empirical investigation of elections proves a much harder test of the motivating force of the partisan context.

As a final point, I define interest groups as organizations involved in electoral politics that are neither individuals (using their own name as the source of the action) nor political parties. Therefore, law firms contributing soft money and corporations funding issue advocacy are identified as interest groups. Although my universe is large and my conceptualization of interest groups broad, I do not track all interest group electoral activity, nor do I list a universe of groups active in elections.¹⁸ For example, I do not systematically track the ground war—mailings, phone banks, and door-to-door mobilization (although I include some of these efforts with my analysis of 527s). To do so would be overwhelmingly time consuming, and to the extent that others have done this, it is as part of a larger project involving dozens of scholars (Magleby 2001). I am confident, however, that these ground war tactics are motivated by the same factors that compel groups to act in ways that I am able to track.

Book Preview

In Chapter 2, I lay out three major changes in the political landscape of the last 30 years. First, I outline the expansion in interest group electoral tactics, focusing on soft money contributions, issue advocacy expenditures, and 527s. Second, I review partisan changes in Congress

over the last three decades, most noticeably the Republican gains in 1994. Finally, I track the evolution of campaign finance law since the 1970s, namely the hundreds of court cases and regulatory changes, the dozens of minor (and a handful of major) amendments to existing statutes, and more than 1,200 opinions issued by the FEC. This chapter is a crucial primer for the empirical investigations that follow.

In Chapter 3, I build my theoretical argument, asserting the partisan and legal changes identified above as the driving causal forces in shifting interest group electoral tactics. In Chapter 4 I begin my empirical analysis by investigating how PACs respond to the ideological and partisan context. Chapter 5 analyzes the partisan context relative to soft money contributions. Although BCRA essentially banned soft money contributions to parties, this analysis is a crucial study of how groups respond to the partisan environment. I switch to an analysis of 527s and interest group television ads in Chapter 6. Chapter 7 concludes the empirical analysis with an investigation of interest groups and the regulatory environment.

Finally, I conclude in Chapter 8 with a discussion of the implications of my findings. For example, concerns about campaign finance have consistently focused on the potential corrupting influence of money in elections. In many ways, aggressive electoral activity may be less of a normative concern than the potential quid pro quo of money for specific votes on bills in Congress. More specifically, if a group engages the electoral process with the goal of moving votes—that is, convincing voters to cast their ballot for a specific candidate—one might assume this approach to be more satisfying and acceptable than the more hidden politics of access. Nonetheless, when that activity is designed to tip the balance of power in Congress as a whole, we are faced then with a community of interest groups invested in majoritarian outcomes, a concern that stems all the way back to the drafting of the Constitution.