

Statement to the U.S. Senate AI Insight Forum

Benjamin L. Ginsberg

Volker Distinguished Visiting Fellow, Hoover Institution, Stanford University

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Senators Schumer, Rounds, Heinrich and Young – thank you for the opportunity to appear before you. This AI Forum has rightly noted in previous sessions that AI’s power is enormous and potentially disruptive. Focusing on AI’s ramifications for our elections and democracy is much needed.

I’d like to address this through the lens of my four decades representing candidates, campaigns, political parties and others in the political process. I want to address three subjects – (1) how AI will impact campaigns and the need to rethink today’s campaign finance scheme so that candidates and political parties are not placed at a further disadvantage to third party groups with superior AI tools; (2) how campaigns will need to update their core functions to deal with AI and its power to create such things as realistic but fake representations of candidates appearance or voice, election interference and attacks on critical infrastructure; and (3) what curative legislation might include.

Senators have very rightly called for safeguards against this power. I certainly agree. But as you address these crucial issues, I want to call your attention to a fundamental (and maybe existential) weakness all candidates, campaigns and their political parties face that is being accelerated at warp speed by advent of AI.

The current federal political legislative/regulatory landscape is, at best, semi-functional now. In all too many elections today, candidates and their campaigns are not the loudest voices. Third party groups using sources of funds prohibited to candidates and parties regularly outspend the candidates and their party committees. That will only increase as candidates and parties are placed at a distinct disadvantage by the current campaign finance system as they try to keep up with what third party groups will amass for their AI-aided political efforts.

The uncomfortable truth is that the campaign finance system has never worked as the legislative authors intended. As you and all other candidates confront deep fakes, false messaging, disinformation and misinformation with the limits and prohibitions placed on you but not outside groups, you all face becoming secondary players in your own campaigns, a development which will corrode our politics and discourse even further.

As you consider the transformational impacts of AI on elections and campaigns, please do not overlook making needed changes to the statutory and regulatory scheme that has been in place since the 1970s and even now has allowed resource-heavy third-party groups to set the issues debate and tone in your races.

AI, with all its power and capabilities, will only exacerbate this democracy-shattering disparity. AI’s arrival accelerates the need to rethink the legal structure surrounding federal campaigns before distortions completely overcome the ability of candidates to control their own campaigns.

In a democracy where the marketplace of ideas determines much of what people see, hear and believe, we need a system where candidates and campaigns have sufficient resources to set the agenda and play the major role in talking about their ideas and convincing voters. That is often not the case now. In 2022, outside groups spent more than all candidates in 55 of the most competitive federal races, including six Senate races:¹

Race	Candidate Spending	Outside Spending
Alabama Senate	\$20,728,179	\$31,861,624
North Carolina Senate	\$65,053,604	\$104,645,577
New Hampshire Senate	\$50,479,943	\$56,703,435
Nevada Senate	\$80,122,498	\$123,671,766
Pennsylvania Senate	\$167,289,035	\$249,272,388
Wisconsin Senate	\$96,370,779	\$127,297,088

In 2020, outside groups spent more than all Senate candidates in Georgia, Iowa, Kansas, Maine, Montana and North Carolina.²

The national political party committees, which ideally develop an issues agenda under which its candidates run with strong electoral support from the party, have similarly been marginalized under the current system. They have lost much of the power they once had to shape races and build party unity through their financial resources.³ As a result of the campaign finance structure, parties have become nothing more than one among many political action committees and nonprofits in an increasingly fragmented marketplace.⁴ Academic studies tracking the resources supporting Senate and House campaigns show that while Party committee contributions and expenditures (primarily independent expenditures)⁵ increased after the 2002 passage of the Bipartisan Campaign Reform Act, outside group PAC spending began exceeding the party committee expenditures at the same time.

The following graph⁶ shows the contributions and spending in support of U.S. Senate and House elections from 1990-2020. It illustrates how non-party independent expenditures have risen from

¹ <https://www.opensecrets.org/outside-spending/outvscand>

² <https://www.opensecrets.org/outside-spending/outvscand/2020?chrt=2022&disp=O&type=>

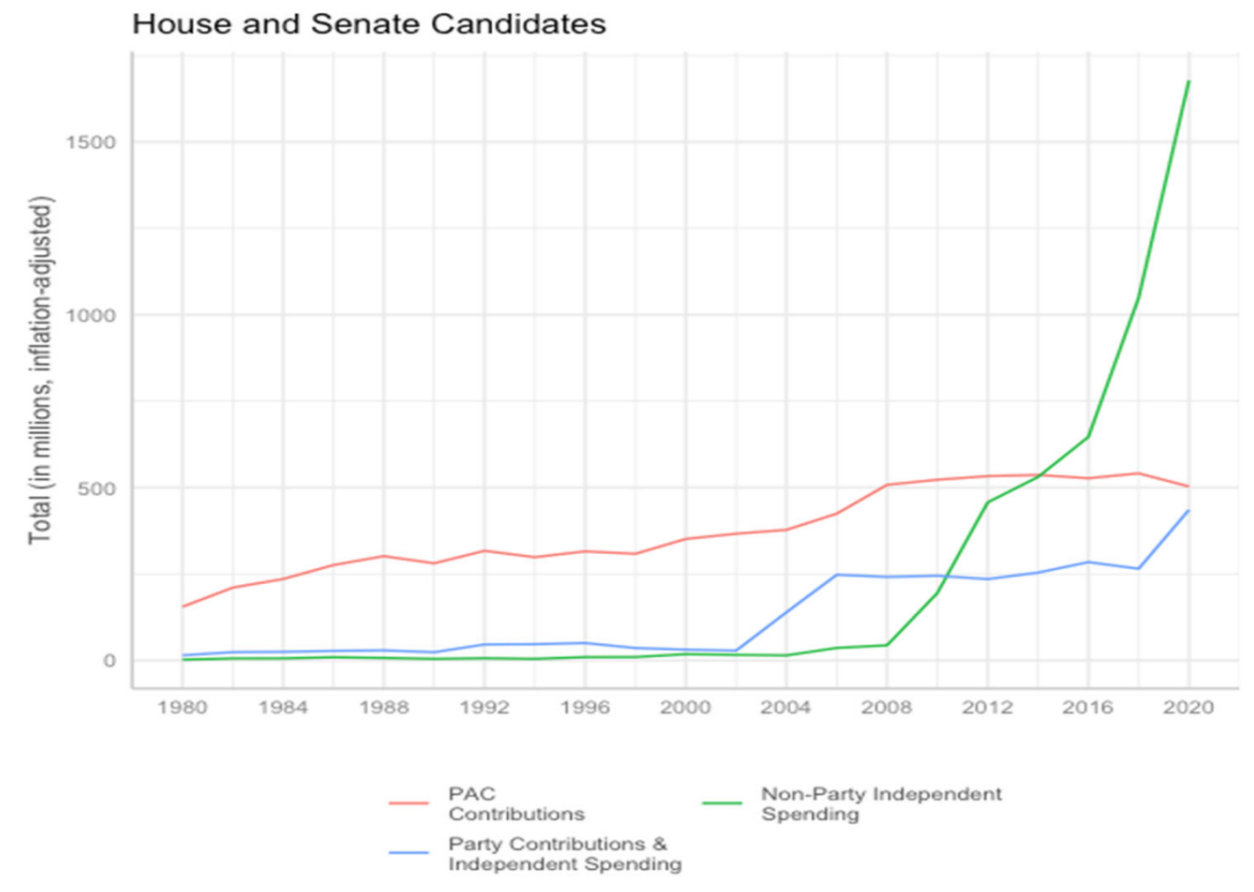
³ See Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 Yale L.J. 804, 809 (2015). While candidate spending has increased, it is falling behind outside groups while, at the same time, the decline of party spending has meant candidates relying more and more on outside groups to handle, without coordination with the candidates, much of their messaging and mobilization. This, in turn, has meant party leadership has fewer levers to keep party discipline on tough legislative votes.

⁴ Steven Levitsky & Daniel Ziblatt, *How Democracies Die* (Crown 2018).

⁵ Which create the thoroughly inefficient legal requirement that party committees spend the bulk of their diminishing share of funds in races without being able to speak to or coordinate with their own candidates.

⁶ Chart courtesy of Prof. Raymond J. LaRaja, Professor of Political Science, University of Massachusetts, Amherst, and Prof. Zachary Albert, Assistant Professor of Politics, Brandeis University. ; Data Source: Adam Bonica. 2023.

\$14.7 million in 2004 to \$1.678 billion in 2020 (some 114 times greater), meaning that the parties, even with independent expenditure units (prohibited from actually communicating with the campaigns), are being unhealthfully dwarfed by outside special interest groups.



While parties may vote more uniformly in Congress than in the past, the difficulties in avoiding government closure cliffs, passing appropriations bills, and even selecting a Speaker indicate that collective action in government has been undermined due to the relative weakness of the parties.

With their superior resources, outside groups have been usurping parties and candidates in terms of setting issue agendas, recruiting and financing candidates to their liking (an especially powerful force in primaries) and aiding their chosen candidates in primary and general elections with money, voter mobilization and messaging aid.⁷ This used to be the purview of the parties in consultation with candidates.

This imbalance will only grow as outside groups' superior resources deploy the power of AI. The result will be narrow special interests funded by sources prohibited to candidates and parties

Database on Ideology, Money in Politics, and Elections: Public version 3.0 [Computer file] Stanford, CA: Stanford University Libraries. <https://data.stanford.edu/dime>.

⁷ See, e.g., Robert F. Bauer, *The Parties' Struggles in the Political "Market,"* 54 Hous. L. Rev. 881, 899 (2017) ("Super PACs are seen to be moving in the direction of assuming most of the functions of parties").

wielding their comparative power to further control the issues debate and rhetorical tone in campaigns while diminishing candidates and their parties to increasingly reactive roles.

What this means for campaigns

The advent of AI means that campaigns will have to evolve to meet the new environment's challenges or face an ever-reduced role. Significant additional costs are inherent in candidates and their parties meeting this challenge. That is why the campaign finance laws need to be revised for today's world. As an initial list, changes in the core functions of campaigns will be necessary to address these issues:

- As the potency of things like deepfakes, misinformation and disinformation increase with AI, campaigns will need far more sophisticated communications operations to track what is being said and to respond rapidly. War rooms for this will grow in need, size, and sophistication. Costs for adequate staffing, technology and expertise will increase.
- The credibility of candidates will be tested as never before as charges and counter-charges launched through AI-enhanced attacks increase. A recent AP/NORC Center/University of Chicago poll finds that a majority of Americans worry that AI will help spread misinformation and disinformation during the 2024 election. The poll finds a broad consensus that candidates should not be using AI to mislead the public, which means that the charges and counter-charges will fly.⁸ Indeed, the potency of AI in the context of contemporary campaigns where polarizing, negative information and misinformation is already rampant means false or misleading media from opposing campaigns and outside groups is predictable, leading to an inevitable rise in media costs.
- While campaigns have used microtargeting to identify both potential donors and voters they want to contact, AI makes this more potent. Campaigns will particularly need cutting edge tools and personnel for persuasion and get-out-the-vote operations. With the more precise information that AI can generate about which messages appeal to individual voters, contacting individual voters via directed social media channels will take place along with mass messaging through television, radio and websites. This will increase costs to campaigns and create the danger that they cannot keep up with outside groups.
- Opposition research, today a feature of all campaigns, will be weaponized with AI tools available to create misinformation and disinformation. Campaigns will need the resources to play both defense and offense, requiring a technologically savvy, and more expensive, operation. Outside groups will have the resources to force campaigns into a purely reactive posture unless campaigns can amass significantly more resources than now.

Reimagining the Law to Meet the Challenge

The current campaign finance system is a major impediment to candidates and political parties using AI for positive purposes while also meeting the challenges of AI and its use by outside groups. The current system is based on the goal of ridding the political system of large individual, corporate and labor union contributions while empowering small individual donors.

⁸ <https://apnews.com/article/artificial-intelligence-2024-election-misinformation-poll-8a4c6c07f06914a262ad05b42402ea0e>

By any measure, this has failed. Today, candidates and political parties are smaller players in their own campaigns (despite having to spend increased time raising money instead of legislating or campaigning), increasingly swamped by unlimited spending from the very same sources of funds that campaigns and parties are barred from using. As for small individual contributions, the most successful fundraising comes from candidates on the political extremes using the most polarizing messages in politics.⁹ Fixing this is a conversation that must be had. The emerging power of AI makes it even more essential. As a suggested starting point:

- Significantly enhance the role of the political parties by increasing the funds they may raise and spend on behalf of their candidates. Increasing candidate and party resources would reduce the vacuum in which large outside groups with unlimited resources currently dominate.
 - The goal would be creating a system where there was no longer an essential role for outside interest groups to fill.
 - Reduce the time Members and candidates feel they need to spend fundraising.
- Increase Transparency – donations to the political parties would continue to be fully reported. As the parties regain their role as the major funding source for campaigns, more of the money spent on campaigns would be disclosed than is now.
- Super PACs and 501(c) groups – while court cases protect their right to participate in the political process, their roles would become less essential than they are now if candidates were sufficiently funded by their political parties.
- Revise the portions of the campaign finance laws pertaining to media. The statutes were written when television advertising received the overwhelming share of campaign related spending. Each campaign cycle since 2012 as seen a large increase in spending on the internet and social media but a great deal of the regulatory structure of the campaign finance system is predicated on television as the primary means of reaching voters.
- The dangers of AI generating damaging false messages about candidates is a real one, and some statutory remedies are necessary to prevent fraudulent misrepresentations in campaigns. An alternative to the Federal Election Commission, which could not put regulations on internet advertising disclaimers in place until March 2023, is needed.
- Congress should require a technological disclosure requirement so that material generated by AI is identified for consumers of that message.

⁹ See Thomas B. Edsall, Opinion, *For \$200, a Person Can Fuel the Decline of Our Major Parties*, N.Y. Times (Aug. 30, 2023) (summarizing academic findings), <https://www.nytimes.com/2023/08/30/opinion/campaign-finance-smalldonors.html>.

The advent of AI comes at a time when a damagingly high percentage of voters do not trust the reliability of our elections. Steps to not acerbate this fraught situation are necessary. Congratulations on holding these AI Forums.