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Unrecorded Volunteer Contributions in Congressional Elections

by

Kathleen Tait

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Introduction

In his book *Congress: The Electoral Connection*, David Mayhew claims that most of what occurs in the United States Congress can be explained by the congressman’s drive for re-election (Mayhew 1974, 13). If we accept Mayhew’s thesis, it stands to reason that campaigns are a very significant part of the national political process and that the factors that cause candidates to win or lose elections are central to the study of congressional election campaigns. One of the most obvious factors in determining the success of a candidate to win elections is his or her ability to raise funds. In examining races for constitutional offices and the U.S. Senate, it was found that "heavy campaign spending by either party . . . is highly correlated to victory: the heavy spenders winning 72 percent of the time. In cases where one party spends 80 percent or more of the money, the party engaged in heavy spending wins all of the time" (Magleby 1986, 28).

Because of reforms in campaign finance law in the last decade, contributions made to candidates and expenditures made by candidates are recorded and disclosed. Although there seems to be a correlation between a candidate’s expenditures and the election outcome, much campaign activity goes unrecorded. An important example of this "unrecorded element" of campaigns, often included in the larger subject of "soft money," is volunteerism. Candidates are not required to report the volunteer time contributed to their campaigns, whether it be contributed by individuals or groups of individuals, such as labor unions and tax exempt (501(c)) organizations. There seems to be at least one invisible variable in the equation for a campaign’s success: contributions of unrecorded volunteer services. Because volunteer work goes unrecorded, it is difficult to tell exactly what impact it has
on individual campaigns or federal elections on the whole.

By one estimate, the "effective use of volunteers can reduce a campaign's payroll by 20 percent" (Webb and Mockus 1981, 19). Twenty percent of a small local election may not be significant, but millions of dollars are spent on federal elections. In 1984, Jesse Helms (R-NC) spent $16.5 million in his campaign for re-election to the U.S. Senate. His opponent, James Hunt, spent $9.5 million just to lose (Ladd 1986, 1). Considering the astronomical expenditures of some Congressional elections, this means that volunteer work could have quite a sizeable impact on campaigns. Further, it is likely that volunteers have a much greater impact on campaigns than simply a reduction in campaign costs, which will be discussed later.

Unfortunately, because it is not recorded, volunteer work is impossible to quantify. This may be the reason that not much attention is given to volunteerism in campaign finance literature. My review of the literature is certainly not exhaustive, but I did not find the topic I will discuss in this paper addressed at any length in the literature I surveyed. In the remainder of this paper, I will first discuss campaign volunteerism in general. I will then look at labor unions and how campaigns may benefit from them in ways that are unrecorded. Lastly, I will do a brief examination of how tax exempt organizations make unrecorded volunteer contributions to campaigns.

**Volunteers**

Volunteers are worth more to a campaign than the free labor they provide. "The presence of volunteers gives a campaign visibility and the appearance of momentum. Volunteers suggest to voters that the candidate is worthy of commitment" (Webb and Mockus 1981, 20). Webb and Mockus further claim that not only do volunteers "help deliver messages to voters--by licking envelopes, writing notes or telephoning friends--they are messages in themselves" (1981, 20). Many voters know very little about the group of candidates from which they must choose. But those voters who have a family member, friend, or neighbor that has volunteered for one of the candidates may be more likely to vote for that candidate. Volunteers perform more services for a campaign than their delineated responsibilities suggest. In this way, volunteers are worth more to a candidate than the money he would lose paying hired help to perform the same labor.

Yet, despite the other advantages, the biggest and most obvious advantage of using volunteers is that they provide a lot of work for no cost; and there is no requirement to report volunteer contribution of time to the Federal Elections Commission. The Code of Federal Regulations (CFR) states:

> The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a political contribution (11 CFR 100.7(b)(3)).

Not only is volunteer work free, but through one clause in the campaign finance law, volunteer work can actually make it possible for a Political Action Committee (PAC) or political party to contribute more to a campaign than it would otherwise be allowed. This clause in the Code of Federal Regulations is referred to as the "volunteer intensive activity loophole." It reads as follows:

> The payment by a candidate for any public office (including State or local office), or by such can-
didate’s authorized committee, of the costs of that candidate’s campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not a contribution to such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For the purposes of 11 CFR 100.7(b)(16), the term “direct mail” means any mailing(s) by commercial vendors or mailing(s) made from lists which were not developed by the candidate (11 CFR 100.7(b)(16) emphasis mine).

The definition of the term "direct mail" is crucial to the way in which organizations are able to take advantage of this clause. The portion of the CFR quoted above states that the cost of materials for the purpose of direct mail is considered a campaign contribution--regardless of whether a volunteer works on this material. If, however, commercial vendors do not perform the mailing of the material, and the mailing list used is developed by the candidate or his campaign, then the material is not considered to be direct mail.

Limitations set on mailing lists should not to be taken lightly. In fact, "the single most important factor in the success of direct mail fund raising is the list you use" (Beaudry and Schaeffer 1986, 171). This does not mean, however, that candidates who must generate their own mailing lists are at a serious disadvantage. Beaudry and Schaeffer explain to campaigners that "there’s no better list than [their] own of proven contributors" (1986, 171). So the restriction on the origin of the mailing list is probably not as big of a hindrance as it might seem to candidates who choose to take advantage of this loophole.

As Brooks Jackson of the Wall Street Journal claims, political parties, political actions committees, or other groups who promote candidates for federal office, can--and do--take advantage of this clause through political and fund raising mailings. Jackson explains that an organization, such as the Republican National Committee, can fund the printing and postage of elaborate and expensive mailings and prepare peel away preprinted labels for the mailings (Jackson 1988). As long as volunteer hands place the address labels on these mailings, no part of the cost of the mailings is considered--for the purpose of contribution limitations--to be a contribution to the campaign of the promoted candidate. This kind of activity is considered to be "volunteer intensive" and thus does not need to be reported as a contribution. Here we see that a proper understanding of the Code of Federal Regulations is crucial to the effective utilization of campaign funds.

Ed Goaz, former legal counsel at the Republican National Committee, claims in reference to the "volunteer intensive activity loophole," that no party has an exclusive advantage over the other in using and interpreting campaign finance law. He does admit, however, that this particular loophole was both discovered by and is used most by Republicans (Goaz 1988). So, although Democrats tend to benefit more from volunteerism in general, Republicans seem especially adept at taking advantage of this particular loophole in the federal code.

Of course with all of the advantages of using volunteers also come some disadvantages. Unlike paid employees, volunteers have no obligation to perform quality work--and nothing to lose if they don’t. They are often unreliable and are even considered a
"pain in the neck" (Webb and Mockus 1981, 19). Various campaigns may see the disadvantages to using volunteers to be greater than the advantages and, therefore, choose to use hired help rather than volunteers.

Although it is impossible to tell with the available data, it appears that Democrats use volunteers more than Republicans. It is logical that various socio-economic factors have an effect on how an individual will contribute to her party, or the candidate of her choice. For those who have sufficient money, it may be easier to contribute dollars than time, while those who earn very little money may find that all they can contribute is their time. This means that, because the Democratic party is known as the party of the poor and tends to attract the blue-collar work force, it is likely that Republicans donate dollars and Democrats donate time. In their article on effective utilization of campaign volunteers, Webb and Mockus cite a nationwide poll sponsored by Targeting Systems, Inc. of Washington, D.C. which suggests that behind professors and students, "blue-collar workers seem to be the third most likely source of campaign workers" (Webb and Mockus 1981, 20).

Although the national composition of the volunteer force may seem primarily Democratic, regionally, this is not always the case. Kay Christiansen, former campaign manager to Rep. Wayne Owens (D-UT), believes that in Utah there are several factors that work against the national trend. In a state where the overwhelming majority of the populace is Republican, where labor unions are not particularly strong, and where civic involvement is encouraged of the many noncareer mothers in the state, it is easy to imagine a Republican volunteer force much stronger than a Democratic one (Christiansen 1988). This heightened Republican volunteering may be one of the factors that cause the GOP to continually have so much success in Utah. Bob Burnek of the Deseret News agrees with this theory and points out that indeed Utah is atypical on almost any issue dealing with partisanship (Burnek 1988).

Although not every campaign chooses to use volunteers, they can be an important part of a campaign that does choose to use them. Volunteers can help the image of a campaign, affect the voting decisions of their families and friends, and provide a significant force of labor at no cost. Labor unions are one of the best and most organized ways for a campaign to get volunteers, as well as being another interesting area in which unrecorded contributions of service to campaigns occur.

### Labor Unions

Labor unions can be an important resource of support for election campaigns in several ways. Unions may distribute material and communicate (via phone banks or otherwise) to their "members, executive or administrative personnel, other employees, and their families," supporting one candidate over another in a federal election (11 CFR 114.4(c)). When unions wish to communicate with the general public, however, that communication must be purely educational or participational, meaning that it must be non-partisan. The Code of Federal Regulations (CFR) states that labor unions may

1. make non-partisan registration and get-out-the-vote communications to the general public (11 CFR 114.4(b)(2)),
2. distribute to the general public, or reprint in whole and distribute to the general public, any registration or voting information, such as instructional materials, which has been produced by the official election administrators (11 CFR 114.4(b)(3)),
3. prepare and distribute to the general public the voting records of Members of Congress as long as the preparation and distribution is not for the purpose of influencing a Federal election (11 CFR 114.4(b)(4)), and
4. prepare and distribute to the general public non-partisan voter guides consisting of questions posed to candidates concerning their positions on campaign issues and the candidates' responses to those questions (11 CFR 114.4(b)(5)).

The CFR also enumerates many criteria by which these activities may be judged to be partisan. It would appear that any attempt at partisan campaigning to the general public by labor unions would be prohibited by the CFR. All of these criteria, however, pertain to the nature of the printed or spoken message given; there are no regulations that dictate who these educational or participational campaigns must be directed toward. If a get-out-the-vote drive is targeted at a certain segment of the population already known to be likely to vote Democrat, then, although the drive is not illegally partisan, the results may very well be partisan.

In addition to the support that labor unions give as organizations, Brooks Jackson of the Wall Street Journal claims that they also supply the Democrats a pool of workers not available to Republicans (Jackson 1988). Unions are convenient for Democrats not only because of their partisanship and the number of volunteers they can provide, but because they are particularly well equipped to do campaign work. Jackson explains that "a lot of what unions do is run elections" within their own organizations, and are therefore well prepared to make the transition to work on national election campaigns. Once labor union members make the decision to use their own time to volunteer to work on a campaign, they are individual volunteers. At this point, they are no longer constrained by the CFR that limits the activity of their union.

Besides the obvious advantage of manpower, labor unions also often have phone banks in operation. This is a great advantage to candidates who have good relations with unions—usually Democrat candidates. A union uses its phone bank in the daytime for inter-organizational work and then leases the phone bank to a campaign after normal business hours for campaign work (Jackson 1988). This kind of arrangement proves to be particularly convenient for those campaigns who are supported by labor unions.

Beaudry and Schaeffer instruct campaign managers that the smart approach is to go to a "friendly business, labor union, or civic organization that has multiple phone lines" (Beaudry and Schaeffer 1986, 100). The Code of Federal Regulations states that persons . . . who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge. as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of the facilities (11 CFR 114.9(d), emphasis mine).

"Normal and usual rental charge" is defined in the Code of Federal Regulations as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." (11 CFR 100.7(a)(1)(iii) (B)).

It is difficult, however, to apply this definition to the rental of a phone bank; a phone bank is such an uncommon item of rental that it is almost impossible to determine its going market rate. Because of the affinity labor unions generally have for Democrats, it seems reasonable that labor unions would lease their phone banks to
Democrats at a very low rate. As a result, Democrats can, for a small fee, lease labor union phone banks that are already in place. Workers who are used to manning the phones for the union can volunteer to work on the campaign after hours. On the other hand, for Republicans to set up a phone bank, they must pay for the installation and rental of phones, as well as find--and often pay for--workers to man them.

"Installation can become a very expensive proposition since local phone companies extract large deposits from political campaigns" (Beaudry and Schaeffer 1986, 100). And indeed this is true. Central Communications Consultants of Salt Lake City informs that the rental charge for 30 standard single-line phones is $500 per month. On top of that, the phone company's (Mountain Bell in this case) charge for the use of 30 phone lines would be $1,500 per month. If a phone system is installed (a separate charge), the use of the lines would cost $500 per month. This means that over a six-month period, a campaign could pay between $6,000 and $12,000 for each phone bank they have in operation across the country. This is a sizeable financial burden for a campaign to bear.

The National Right to Work Committee prepared a complaint filed in March of 1984 by Ralph Hettinga claiming that "eight labor unions had made prohibited in-kind contributions by providing telephone services and equipment and office space to Walter Mondale's presidential renomination campaign at less than fair market value" (Alexander 1987, 48). But how can the "fair market value" of such services be accurately assessed? We can determine how much it would cost for a campaign to run a phone on its own (above paragraph), but that does not determine the fair market value of the part-time rental of a phone bank; if a campaign uses the phone bank of another organization after hours, then using the cost to run a phone bank independently certainly would be an excessive rental fee.

It is important to note that there is somewhat of a Republican equivalent to the Democrat-favored labor union; it is the corporation. Throughout the Code of Federal Regulations, corporations and labor unions are discussed together, as if they were the same type of organization. Often there will be a section of code addressing labor union behavior followed by a nearly identical section of code addressing the activity of corporations. So it is important to remember that any tactic used by labor unions to benefit Democrats may also be used by corporations to benefit Republicans.

There are some factors concerning non-reported benefits of service that seem to give a campaign which is more closely tied to labor unions an advantage over a campaign that is supported by a corporation. Some of these factors have already been mentioned. First, the nature of labor unions is such that they already have phone banks set up. They are political organizations, accustomed to using phone banks for internal politics. Corporations, on the other hand, do not have the same type of political structure and do not have the same kind of need for a phone bank as do labor unions.

Second, those who belong to labor unions are more likely to be volunteers. The Target Systems, Inc. poll, referred to earlier in this paper, states that after professors and students, blue collar workers are the third most likely group to volunteer time to political campaigns. Apparently, white collar workers--those who would most likely be corporation employees--were not likely enough to volunteer to be mentioned. While it is true that some blue-collar workers are members of unions and employees of corpo-
rations at the same time, there are some
important differences. The composition of
the leadership of the two organizations is
very different.

The leadership of labor unions is com­
posed of blue-collar workers, which is very
different from the executive, uppermiddle
class composition of corporation leadership.
Also, the organization from which an indi­
vidual gains his or her identity should be
considered. Blue-collar workers are consis­
tently more loyal to their unions than their
corporate employers.

Third, labor unions are renowned for
being a serious political force in that their
members will vote as a block for the can­
didate they endorse--usually a Democratic
candidate. Although corporation executives
are likely to have the same interests among
themselves and therefore vote for the same
candidates, corporations do not have the
same history of voting loyalty in blocks.

Clearly, labor unions are an important
sources of unreported volunteer service
contributions in the acts they perform as a
union and as a vehicle by which to attract
prospective campaign volunteers. These
same types of valuable contributions to
campaigns are provided by other organiza­
tions which are, unlike labor unions, not
constrained by the Federal Election Com­
mission.

501c Organizations

Beyond labor unions, Democrats enjoy
another major source of unrecorded volun­
teer contributions. The "Non-Profit/ Demo­
crat Political Network," as labeled in a
recent National Republican Senatorial Com­
mittee report prepared by Bob Bissen, the
Director of Special Projects at the National
Republican Senatorial Committee, has
emerged as another source of "volunteer­
like" effort. The tax-exempt organizations
(known as 501(c) organizations) in this
network perform many of the same functions
normally performed by volunteers; these are
activities that here too are not reportable to
the Federal Elections Commission.

The two 501(c) organizations in the
"network" that concern themselves with
political campaigns are 501(c)(3) (charitable
or educational) organizations, and 501(c)(4)
(social welfare) organizations (Tax-Exempt
Organizations 1987, 6). The report explains
that understanding the limitations on political
activity that these organizations have helps
to explain what the organizations do.

A 501(c)(3) organization "may not par­
ticipate directly on behalf of, or in opposi­
tion to, any candidate for public office." Like labor unions, it can perform education­
al and participational communication activi­
ties directed toward the general public. A
501(c)(4) organization "must operate primar­
ily in a manner designed to further the
common good by bringing about social
improvement and civic betterment." The
group may be clearly partisan and may
openly support or oppose a candidate "as
long as the primary purpose of the group
remains promotion of social welfare" (Tax­
Exempt Organizations 1987, 6). "Social
welfare" is obviously a broad category; this
kind of ambiguity certainly accounts for the
freedom with which these groups act, a
subject which will be discussed later.

The above mentioned report, known as
the Kasten Report, claims that there are
many 501(c) organizations that involve
themselves in political campaigns, but that
"there is a nationwide network of groups [in
25 states] working together" headed by the
group known as Citizen Action. The report
states that "shared office space, affiliates
listed on letterhead and similar boards of
Directors and officers help tie the various groups together" (Tax-Exempt Organizations 1987, 1).

The groups in this network were found to perform many of the same volunteer efforts previously discussed in the labor union section of this paper. A Citizen Action brochure explains some of the services it provides for candidates the group chooses to support.

2. Volunteer recruitment.
3. Issues development and briefing papers.
4. Phone banks.
5. Media. Free media on the candidate's stands on the issues and paid media in targeted races.
6. Professional staff assistance. Citizen Action staff are trained and experienced in campaign management and a variety of campaign skills (Tax-Exempt Organizations 1987, 2).

The Kasten Report was prepared in reaction to the experience of Senator Bob Kasten (R-WI) with the Wisconsin Action Coalition (WAC) in his 1986 Senatorial race against Ed Garvey. WAC campaigned to defeat Kasten in his efforts to become re-elected, but did not succeed. The report claims that other Republican senators and Senate candidates across the nation were similarly attacked by groups like WAC. "In races nationwide groups such as WAC tried, and in many cases succeeded, in having a major impact on behalf of the Democrat in the race" (Tax-Exempt Organizations 1987, 1).

In the Wisconsin Kasten/Garvey senatorial race, WAC and other 501(c) organizations affiliated with the national Action Coalition, spearheaded a "truth drive," passing out flyers and holding press conferences. WAC claims that on election day it made 18,500 get-out-the-vote phone calls and believes itself to be responsible for 2-4 percent of the total votes cast for Ed Garvey (Tax-Exempt Organizations 1987, 5).

The report claims that WAC "is one of a growing number of groups that have taken advantage of their Internal Revenue Service 501(c) (3) or 501(c)(4) tax exempt status and become increasingly active in political campaigns, providing either direct or indirect assistance to candidates" (Tax-Exempt Organizations 1987, 1). As mentioned, a national 501(c) organization, known as Citizen Action is the parent group of many of these organizations (Tax-Exempt Organizations 1987, 2).

Steve Taggart of the Public Affairs Advisory Group in Salt Lake City claims that much of what Kasten experienced in Wisconsin also occurred in various 1986 state and national races in Idaho. Taggart reports that Idaho Fair Share, a 501(c) organization, performed get-out-the-voter drives, sent lawn sign crews, and created publicity in much the same way WAC did in Wisconsin. Idaho Fair Share even performed "die-ins" (where participants lay seemingly lifeless on the ground) to attract media attention (Taggart 1988).

These 501(c) organizations must answer to the Internal Revenue Service, but federal and state regulation of them is minimal and much of their activity goes unreported. Organizations such as those discussed above do not necessarily have to be in support of Democratic candidates. All of those in this 1986 "network," however, supported Democrats and such organizations seemed to have a significant impact on the outcome of at least one congressional election.

Ben Ginsberg, of the National Republican Senatorial Committee, stated in a telephone interview that there are no "behind the scenes" groups like those discussed
above for Republican candidates (Ginsberg 1988). This suggests that although both parties can benefit from the unrecorded volunteer services of 501(c) organizations, both parties don’t.

It would be valid to investigate the legality of the behavior of these tax-exempt organizations, and further, it might be a valuable exercise to scrutinize the law concerning these types of organizations. For the purpose of this paper, however, the significance of the activities of these organizations and others lies in their unrecorded effect on the outcome of federal elections. Because contributions of volunteer effort are not considered contributions according to the Code of Federal Regulations, a supportive organization (PAC, political party, 501(c) group, etc.) can donate large sums of money in addition to the volunteer effort they coordinate and provide without going over their contribution limit. A candidate can have the advantage of claiming to be the "poor" man in the race when in actuality, he may be receiving the same benefits as his opponent who must pay for these services. Also, if they are unrecorded, then they are very likely also going to be uncalculated. In other words, when engineering elections or studying the causes of victory or defeat in elections, we may be ignoring some very significant factors.

Conclusions

Beyond a candidate’s ability to raise campaign funds is his or her ability to use those funds effectively. If any of the factors in the formula for a successful election campaign is overlooked, then the campaign may be mishandled. When Federal Election Statistics are released, it is easy to find the number of dollars spent in the campaign of a congressional election candidate, but because candidates are not required to record and report volunteer activity, it is very difficult, if not impossible, to uncover this information. It is then only a hope to be able to determine the significance of these activities in federal elections.

Judging from the reaction of some to unrecorded volunteer contributions, we can conclude that they have at least some significance. Critics of the Federal Election Commission claim that certain "expenditures may be legal but they escape federal campaign disclosure requirements," and that they have created a "underground political economy" (Alexander 1987, 54). These critics list several such expenditures, including:

Use of corporate and union or membership organization treasury funds to pay the costs of nonreportable communications with employees, stockholders or members advocating the election or defeat of specific candidates.

Use by tax-exempt foundations of unlimited and undisclosed tax-deductible money—some of it channeled to the foundations by national party committees and their allies—to pay for ostensibly nonpartisan but carefully targeted voter registration and turnout drives (Alexander 1987, 53).

The ethics of much of what goes on in this underground political economy are questionable. Is it ethical to keep the letter of a law but act in a way that is contrary to the intent of that law? The logic of the law is also somewhat problematic. If the loopholes that are currently discovered and used exist, then how many more undiscovered loopholes may there be? There are certainly more than I have discussed in this paper.

These are all very valid topics of discussion but, after having studied the subject of unrecorded volunteer contributions made to election campaigns, it would be difficult for me to editorialize on the ethical aspects of this underground political economy or make
recommendations for a change in federal policy or federal election law. There is simply not enough data to make a thorough study of this situation, or problem, as many see it. The only definite conclusion I can make is that unrecorded volunteer campaign contributions and the effect they have on federal elections is an area that needs further research.

Tenuously, I can also make some other conclusions. It seems that labor unions and tax-exempt organizations give Democrats a serious advantage over Republicans in the area of volunteer contributions, and this advantage is not reported. Some may consider this to be a just advantage that merely raises Democrats up to equal ground in campaign resources with Republicans, who consistently benefit from dollar contributions. Others may consider it to be an unfair advantage—one that should be ended by forcing organizations to report contributions of volunteer effort, counting them against their contributions limitations.

I would suggest an approach that takes both of these sides of the argument into consideration. Contribution of volunteer effort ought to be quantified and reported, but not counted against an individual’s or organization’s contribution limit. This would accomplish several important ends. First, those who are now able to falsely claim to be financial underdogs could no longer do so in the same manner that they have been. Second, forcing volunteer contributions to be counted as part of an organization’s contribution limits would discourage volunteerism, and in turn discourage much of the populace from important active participation in the political process. Under my proposal, campaigns would still be rewarded for using volunteer labor. It stands to reason that the greater the awareness of, and value placed on, volunteer activity—of the many types heretofore discussed—the more likely members of this democracy will be to participate. This, in turn, increases the integrity of our idea of true representation. Lastly, with the mandatory reporting of volunteer activity, the art of engineering campaigns moves closer to being a science. This will not only provide academics with fascinating and useful information, but it may result in increased use of volunteers in campaigns. And this, in turn, could very well result in less money being spent on now astronomically expensive congressional elections.
WORKS CITED


