

In The  
**Supreme Court of the United States**

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IOWA RIGHT TO LIFE COMMITTEE, INC.,

*Petitioner,*

v.

MEGAN TOOKER, in Her Official Capacity  
as Iowa Ethics and Campaign Disclosure  
Board Executive Director, *et al.*,

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eighth Circuit**

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**BRIEF OF AMICI CURIAE  
DAVID M. PRIMO, PH.D. AND  
JEFFREY D. MILYO, PH.D.,  
IN SUPPORT OF PETITIONER**

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**INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amicus curiae* David M. Primo, Ph.D., is the Ani and Mark Gabrellian Professor and Associate Professor of Political Science and Business Administration at the University of Rochester. *Amicus curiae* Jeffrey D. Milyo, Ph.D., is a Professor of Economics at the University of Missouri at Columbia. *Amici* are respected scholars in the area of campaign-finance law and the effects such laws have on public perceptions of government, competitiveness of elections, and participation in the democratic process. Dr. Primo and Dr. Milyo have both served as expert witnesses in a variety of campaign-finance cases brought in state and federal court. Dr. Primo's testimony was cited by this Court in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2822-23 (2011).

One of the issues presented by this Petition is whether a government interest exists sufficient to justify a complete ban on corporate contributions to candidates for political office. *Amici* have studied in depth the effects of contribution limits, including source prohibitions, and have found that campaign-finance laws regulating corporate contributions to

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<sup>1</sup> The parties were notified ten days prior to the due date of this brief of the intention to file. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief. These written consents have been filed with the Clerk.

political campaigns have little to no effect on public perceptions of government. *Amici* believe that these empirical findings will assist the Court in its decision on whether to grant certiorari in this case.



## SUMMARY OF ARGUMENT

This case provides an important opportunity for this Court to clarify the role that social-science evidence should play in campaign-finance jurisprudence. Although this Court has previously held that speculation and conjecture are never enough to carry a First Amendment burden, *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000), when it comes to determining the constitutionality of campaign contribution limits, lower courts routinely rely on little else. Even worse, however, lower courts have consistently ignored the growing and unrebutted body of scholarly literature – summarized below – showing that contribution limits like Iowa's have no meaningful effect on public trust in government or perceptions of corruption.

This Court should grant certiorari to make clear that federal courts reviewing the constitutionality of campaign-finance laws should rely on actual social-science evidence rather than hunches and speculation about the role of money in politics. Taking social-science evidence with respect to contribution limits seriously means that courts can no longer justify bans on corporate campaign contributions on the grounds

that such bans reduce the appearance of political corruption.



## REASONS FOR GRANTING THE PETITION

For decades, it has been taken on faith that there is a compelling governmental interest in limiting the sources and amounts of campaign contributions given directly to candidates, due to a fear that, in the absence of limits, quid-pro-quo corruption, or the appearance of such corruption, will damage our democracy. *See Buckley v. Valeo*, 424 U.S. 1, 26 (1976). Yet there is no body of empirical social-science research demonstrating a link between campaign contribution limits and perceptions of government, a fact that is all the more remarkable considering that some states impose no limits on campaign contributions, thereby creating an opportunity to observe such a link if it exists. This disconnect between courtroom assumptions and the actual findings of social science has profound and troubling consequences, since these assumptions form the basis for decisions restricting First Amendment rights.

This case is a perfect example. The State of Iowa allows individuals and unions to make *unlimited* campaign contributions to political candidates. At the same time, the state has entirely prohibited contributions from corporations, apparently out of concern that even a single dollar in corporate campaign contributions will create a damaging appearance of corruption. *See Iowa Code* § 68A.503 (2013). But the only



way to reach that conclusion is to ignore the findings of social science, something that has become, unfortunately, an all-too-common occurrence in federal courts.

As explained in Section I, below, federal courts are consistently relying on anecdotal or distorted evidence – or no evidence at all – in resolving campaign-finance cases. As a result, they have ignored the growing and unrebutted body of scholarship, discussed in Sections II and III, finding that neither prohibitions on corporate political contributions nor restrictions on campaign fundraising and spending more generally have any meaningful effect on public perceptions of government corruption. This Court should grant the petition and use this case to send a message to lower courts that social-science evidence matters and should be taken seriously in resolving the important First Amendment issues raised by campaign-finance restrictions.

#### **I. Federal Courts Are Consistently Relying on Anecdotal or Distorted Evidence – or No Evidence at All – in Resolving Campaign-Finance Cases.**

Advocates of campaign-finance restrictions have rarely felt compelled to marshal evidence demonstrating that campaign-finance laws reduce public perceptions of government corruption, in part because federal courts have to date been content with relying on anecdote or simply faith that such a link exists.

This is problematic for multiple reasons. First, it conflicts with this Court’s repeated statements that “mere conjecture” is never adequate to carry a First Amendment burden.<sup>2</sup> Second, it leads to inconsistent decisions among courts reviewing campaign-finance laws, because anecdotes advocating for any position are easy to find.<sup>3</sup> Finally, the common assumption that campaign-finance laws reduce public perceptions of corruption conflicts with *amici*’s research – discussed in Section II, below, which establishes that no such link exists.

In the absence of empirical evidence to support their arguments, defenders of these laws have instead distorted the existing empirical evidence. In *United States v. Danielczyk*, for example, the United States asserted as a fact that contributions by corporations heighten public perceptions that government is corrupt. 683 F.3d 611, 618 (4th Cir. 2012). The United States cited as the exclusive scholarly support for this proposition an article authored by *amici*.<sup>4</sup>

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<sup>2</sup> *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 392 (2000); see also *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993) (holding that, even in the commercial-speech context, “mere speculation or conjecture” are insufficient to carry a First Amendment burden).

<sup>3</sup> See Brief of the Institute for Justice as *Amicus Curiae* in Supp. of Appellants at 23-30, *McCutcheon v. FEC* (May 13, 2013) (No. 12-536), 2013 U.S. S. Ct. Briefs LEXIS 2200.

<sup>4</sup> See Brief for the United States at 42, *United States v. Danielczyk*, 683 F.3d 611 (4th Cir. 2012) (No. 11-4667) (ECF No. 16) (citing David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence From the States*, 5 *Election L.J.* 23 (2006)).

This assertion by the United States, however, misrepresented *amici*'s article, as well as their underlying research, detailed below. Nevertheless, as in many such cases, the Fourth Circuit relied upon this false premise to justify its decision upholding the federal prohibition on corporate political contributions. See *Danielczyk*, 683 F.3d at 618 (concluding that “[p]revention of actual fraud and perceived corruption and the threat of circumvention are firmly established government interests that support regulations on campaign financing”). This is but one example of how the reliance upon wholly unsubstantiated conclusions has led to the curtailment of political speech and association.

## **II. *Amici*'s Research Undermines the Argument That Allowing Corporate Campaign Contributions Increases Public Perceptions of Government as Corrupt.**

Actual social-science evidence on the effects of corporate contribution bans on public perceptions of government stands in stark contrast to the picture painted by defenders of such prohibitions. *Amici*'s research has established that the effects of corporate campaign contribution restrictions on perceptions of government – specifically, measures of “political efficacy” – are negligible. Systematic analysis of statistical evidence does *not* establish that perceptions of government are meaningfully improved by stricter campaign-finance laws, including corporate contribution limits. Thus, *amici*'s research runs counter to the

argument that corporate contributions heighten perceptions of government corruption.

*Amici* studied the effects of state campaign-finance laws on three public-opinion questions related to “political efficacy”, *i.e.*, the belief that an individual can influence the political process. See David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence from the States*, 5 Election L.J. 23 (2006) (hereinafter, “*Campaign Finance Laws*”).<sup>5</sup> These questions focus on three aspects of survey respondents’ feelings of efficacy: whether people “like them” have a say about what the government does; whether public officials care what people “like them” think; and whether politics is too complicated for people “like them” to understand.<sup>6</sup> *Amici* studied whether responses to these questions were influenced by the presence or absence of four types of state campaign-finance regulations: disclosure requirements; limits on organizational (including corporate) contributions; limits on individual contributions; and public financing

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<sup>5</sup> In the political science literature, trust and political efficacy are distinct but related concepts. Trust typically relates to faith in the government while efficacy relates to a belief that one can influence the political process. See Jack Citrin, *Comment: The Political Relevance of Trust in Government*, 68 Am. Pol. Sci. Rev. 973 (1974); Angus Campbell *et al.*, *The Voter Decides* (1954). As discussed below at page 10, further research by *amici* has found no link between limits on corporate political contributions and public trust in government.

<sup>6</sup> These questions are part of a biennial survey of the American electorate, the American National Election Studies. See <http://www.electionstudies.org> (last visited Oct. 30, 2013).

of elections.<sup>7</sup> *Amici's* article was the first scholarship to use state campaign-finance laws to study the relationship between campaign-finance regimes and perceptions of government.

*Amici's* research revealed that “[o]verall, no state campaign finance laws appear to have a substantively large impact on the public’s perceptions of government.” *Campaign Finance Laws*, 5 Election L.J. at 26. In particular, limits on contributions by organizational donors (including corporations) are estimated to have very small effects on all three measures of efficacy and only in one case – the “have a say” measure – was the estimate statistically distinguishable from zero. *Id.* at 33.

In addition to finding that the presence of limits on contributions by organizational donors yielded only one statistically significant finding, *amici* also found the extent of that effect to be negligible. *Amici's* research revealed that voters living in states with organizational campaign contribution limits (and no individual limits) have only a four percentage-point greater chance of feeling politically efficacious. *Id.* at 34.<sup>8</sup>

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<sup>7</sup> The research coded a state as having a limit on organizational contributions if it had *any* restrictions on contribution by “corporations, unions, and PACs.” There was no distinction drawn between direct corporate contributions and contributions by a corporation’s PAC.

<sup>8</sup> Voters living in states with *both* corporate and individual campaign contribution limitations have a one percentage-point  
(Continued on following page)

Although this four percentage-point increase is statistically significant – *i.e.*, unlikely to be attributable to chance – it is not substantively significant. This is a critical and often-overlooked distinction. When a research finding is statistically significant, it means that the researcher can be confident that the finding is not due to chance. Statistical significance, however, provides no guidance as to whether the effects found are large or small, *i.e.*, whether the finding is substantively significant. For example, research might find that drinking a single cup of coffee per day reduces the likelihood of catching a cold by .0000001%, and that this result is statistically significant. This means that the findings are unlikely to be attributable to chance, but it does not mean that one can conclude drinking a daily cup of coffee will ward off colds.

While there are no formal “tests” for substantive significance, the estimated four percentage-point increase in only one of three measures of efficacy is small in comparison to the average response to this question. Among all respondents, 60% feel that others like them “have a say” in government. The effect of organizational (including corporate) contribution limits is to increase that figure to 64%. Further, this four percentage-point increase in this one measure is small in comparison to other effects that *amici* estimated; for

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*smaller* chance of feeling politically efficacious – an effect that is not statistically significant. *Campaign Finance Laws*, 5 Election L.J. at 34.

example, the estimated impact of a college degree versus a high-school degree is about five times larger. For this reason, *amici* emphasize in their original research article that “the results for contribution limits, even when statistically significant, are substantively modest.” *Id.* at 35.

These findings about the effect of corporate contribution limits on political efficacy are consistent with *amici*’s other findings on the effect of such limits on the related concept of trust in government. In an alternative analysis found in the appendix to *Campaign Finance Laws*, *amici* studied the effect of state campaign-finance laws on trust in state government. In this supplemental analysis, the effect of limits on organizational contributions is also indistinguishable from zero. *Id.* at 37. Moreover, recent research shows that state limits on corporate contributions have a negligible impact on direct measures of public trust in state government.<sup>9</sup>

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<sup>9</sup> A working paper by Dr. Milyo expands upon the methodology used by *amici* in *Campaign Finance Laws*. Dr. Milyo’s new work pools the results of several national surveys of voter perceptions of state government. The findings of this new research are consistent with *amici*’s findings in *Campaign Finance Laws*. See Jeff Milyo, *Do State Campaign Finance Reforms Increase Trust and Confidence in State Government* (April 2012) (unpublished paper), available at [http://web.missouri.edu/~milyoj/files/CFR\\_and\\_trust\\_in\\_state\\_government\\_v3.pdf](http://web.missouri.edu/~milyoj/files/CFR_and_trust_in_state_government_v3.pdf). A related working paper discusses the absence of systematic statistical evidence that state campaign-finance laws reduce political corruption in the states. See Adriana Cordis and Jeff Milyo, *Do State Campaign Finance Reforms Reduce Public Corruption?*, (Continued on following page)

Accordingly, *amici's* findings do not support the argument that the public is more likely to perceive government as corrupt when corporate campaign contributions are allowed. Instead, social-science research suggests that public opinion about government will be essentially unchanged with or without a ban on corporate contributions.

### **III. The Academic Research Undermines the Conclusion That Public Perceptions of Government Are Influenced by Political Contributions and Spending.**

*Amici's* findings are not an outlier. The overwhelming majority of empirical studies have found virtually no relationship between trust in government and political contributions and spending. For example, as shown in Figure 1, below at page App. 1, a 2003 study demonstrated that the sharp decline in the public's trust in government during the 1960s and 1970s preceded the significant increase in congressional campaign spending that began in the late 1970s. See David M. Primo, *Campaign Contributions, the Appearance of Corruption, and Trust in Government*, in *Inside the Campaign Finance Battle: Court Testimony on the New Reforms* 285, 290 (A. Corrado *et al.* eds., 2003). Moreover, this same study found virtually no relationship between campaign spending

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Mercatus Center Working Paper 13-09 (April 2013), available at [http://mercatus.org/sites/default/files/Milyo\\_CampaignFinanceReforms\\_v2.pdf](http://mercatus.org/sites/default/files/Milyo_CampaignFinanceReforms_v2.pdf).



and trust in government during the period after 1980. *Id.*

Indeed, as shown in Figure 2, below at page App. 2, this study discovered that trust in government actually increased at the same time that political parties were becoming more dependent upon “soft money” – contributions to political parties that, to a large extent, came from corporations. *Id.*

A 2004 study confirmed, as shown in Figure 3, below at page App. 3, that, even as “soft money” contributions increased in the 1990s, public perceptions of government as corrupt were declining. See Nathaniel Persily and Kelly Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Pa. L. Rev. 119 (2004). This study concluded that “trends in general attitudes of corruption seem unrelated to anything happening in the campaign finance system (e.g., a rise in contributions or the introduction of a particular reform).” *Id.* at 122. Instead, the study explained that the public’s perception of corruption rises and falls with the popularity of the incumbent president, declining during popular wars and economic prosperity while rising during times of recession. *Id.* at 121.

Moreover, earlier research into campaign spending concluded that increased spending has the “generally beneficial” effect of shedding light on a candidate’s policies and stances on issues. See John J. Coleman & Paul F. Manna, *Congressional Campaign Spending and the Quality of Democracy*, 62 J. of Politics 757,

759 (2000), *available at* [http://www.campaignfreedom.org/doclib/20100303\\_ColemanSpendingDemocracy2000.pdf](http://www.campaignfreedom.org/doclib/20100303_ColemanSpendingDemocracy2000.pdf). This study examined variation across districts in the 1994 and 1996 U.S. House elections, and concluded that increased campaign spending in a congressional district did not encourage mistrust or cynicism. *Id.* at 756. To the contrary, campaign spending actually contributed to the “quality and quantity” of public discourse, and made “political elites (or would-be elites) accountable to the governed.” *Id.* at 757.

Thus, like the research of *amici*, the broader academic research does not support the conclusion that public perceptions of government are influenced by political contributions and spending.



## CONCLUSION

The “appearance of corruption” standard that has been put forward to justify the ban on corporate contributions in Iowa is not supported by social-science evidence. *Amici*’s research, consistent with other scholarly research, demonstrates that laws like Iowa’s do not have meaningful effects on perceptions of government. Accordingly, *amici* respectfully urge the Court to grant the Petition and make clear that the First Amendment demands that restrictions on

political speech and association be backed up by more than speculation and conjecture.

Respectfully submitted,

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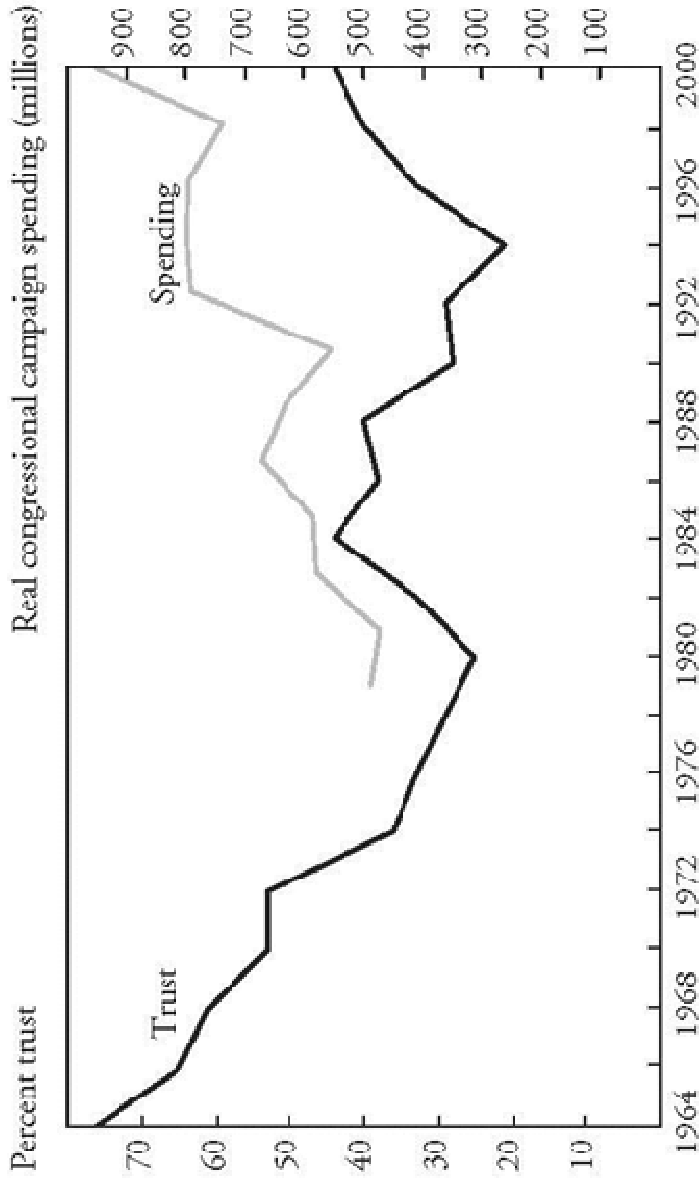
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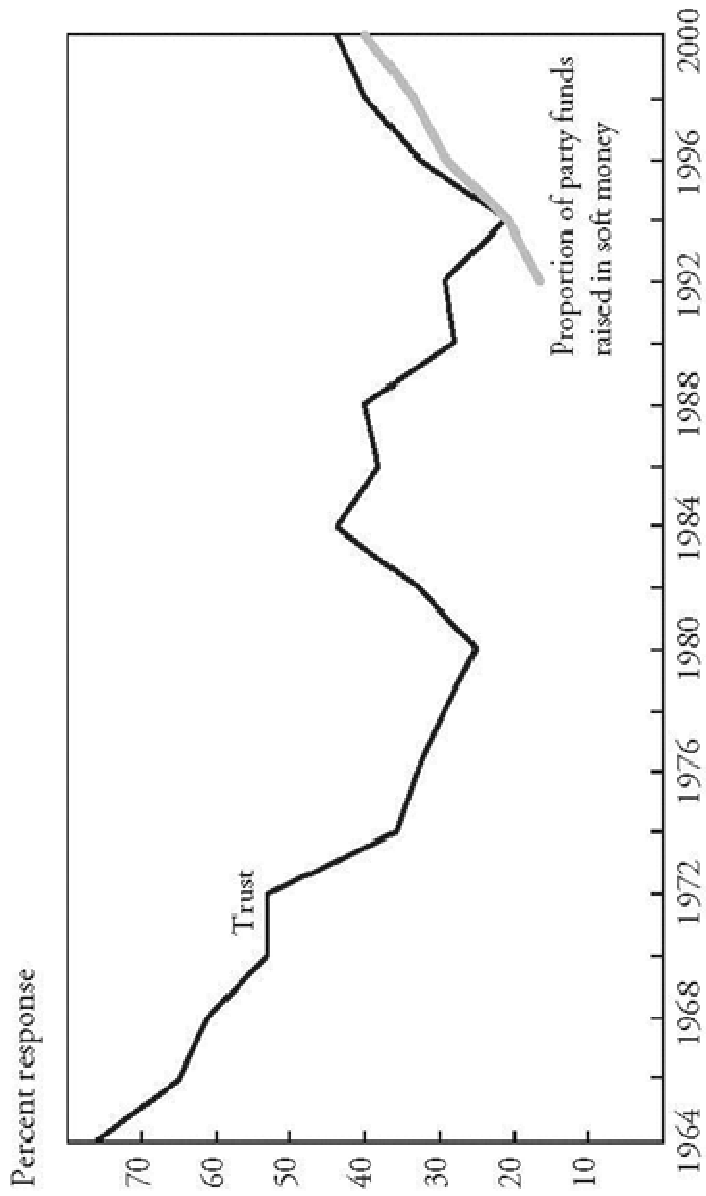
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*Figure 1: The Decline in the Public's Trust in Government Preceded a Spike in Congressional Campaign Spending.*



*Figure 2: As the Political Parties Became More Dependent on Soft Money, Trust in Government Increased.*

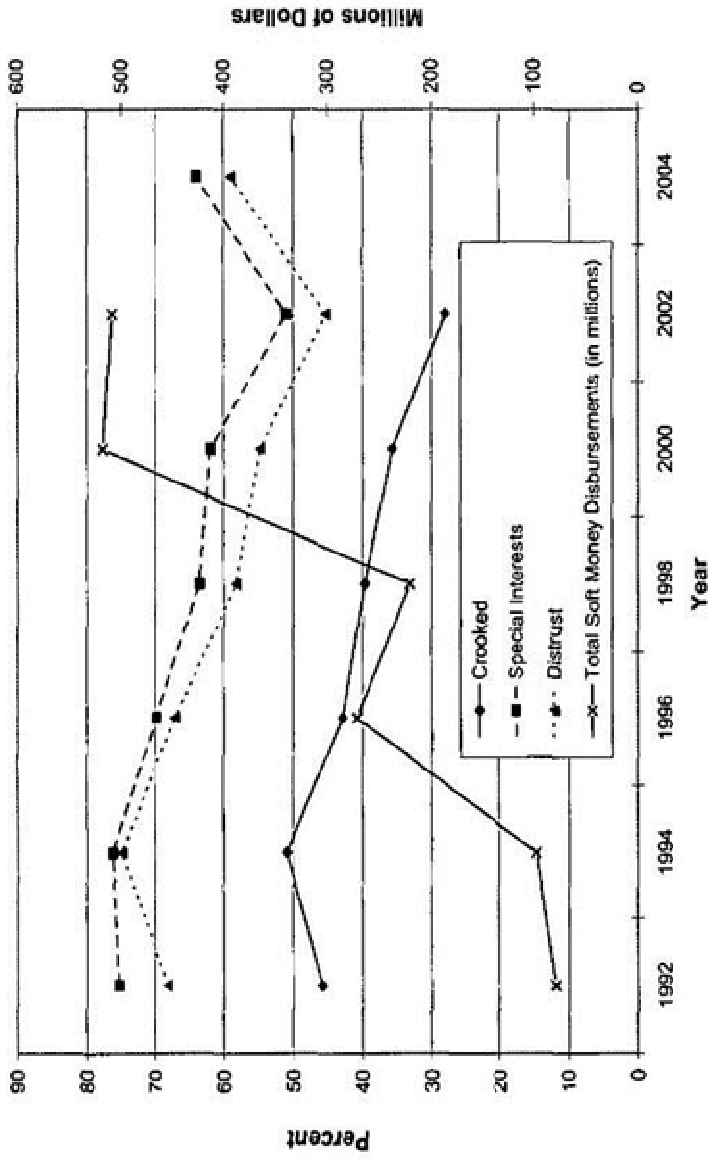


Figure 3: As Soft Money Increased in the 1990s, Perceptions of Corruption Declined.