Campaign Treasurers and Disclosure: Requiem for a Third-Party Gatekeeper Strategy?

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ABSTRACT

This article provides the first empirical study of the work of campaign treasurers, an important part of the original design for the regulation of campaign finance. Third-party enforcers and gatekeepers are central figures in many regulatory systems, but campaign treasurers are rarely seen as important tools in the oversight of American elections. Drawing on interviews with treasurers, election law lawyers, and Federal Election Commission (FEC) staff, our analysis emphasizes the dynamics of campaigns, particularly the cyclical and transitory nature of candidate campaigns and the weak regulation by the FEC. The result has been very hands-off oversight by treasurers. This article suggests a number of steps, such as professionalization and licensure, by which treasurers could become more accountable and significant gatekeepers. Unfortunately, the possibilities of reform are also increasingly undermined by pathways and practices of financing campaigns that circumvent treasurers and candidate campaigns entirely.

Keywords: disclosure, campaign finance, campaign treasurers, third-party enforcement, gatekeepers

INTRODUCTION

WITH ALL THE INK SPILLED over the fear that American democracy has been corroded and corrupted by the flow of money through election campaigns, remarkably absent from the discussion has been the role of campaign treasurers. For decades, treasurers seemingly have had a front-row seat: By law, every candidate for federal office must have a person who is responsible for authorizing, monitoring, and reporting on all financial transactions. Yet they work in relative obscurity, and although occasionally individual treasurers have been the subject of prosecution, collectively they rarely receive consideration as a factor in the integrity of elections. This situation presents a puzzle in light of the signif-

icant attention given in other areas of public policy to gatekeepers and third-party enforcers—collectively, individuals who bear ethical or legal obligations for verifying that an organization is in legal compliance, withholding support if it isn't, or even exposing non-compliance to regulators. No parallel interest has emerged in electoral politics. This disparity animates a central question: Where is the treasurer in the American system of campaign finance?

Through an empirical study into their work, this article examines the roles campaign treasurers occupy in contemporary campaigns and considers whether reforms could make them more meaningful gatekeepers over campaigns. At its heart, we argue, the way the job of treasurer is defined at present, reflecting the limited accountability demanded by the Federal Election Commission (FEC), inhibits the development of treasurers who have the capacity and drive to serve as gatekeepers. A more ambitious vision for campaign treasurers is available, and some signs may suggest that the role could develop a greater capacity for professional oversight. At the same time, the rise of independent expenditures

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may so marginalize candidates' campaign treasurers that without more fundamental reforms, current avenues for progress are closing. It may soon be time to offer a requiem for the gatekeeping model in campaign finance. In pursuing these nuances, the first section explains the general model of gatekeepers in campaign finance regulation. The subsequent two sections shed empirical light on the work of treasurers at present and then examine the wider implications of the situation as it has evolved today.

CAMPAIGN TREASURERS AS GATEKEEPERS

The treasurer has been such a marginal figure in discussions of campaign finance that it can be difficult for those immersed in electoral politics to imagine an alternative: a world in which treasurers are central figures in ensuring the integrity of elections. The first goal here is to explain the design features of treasurers in the system of campaign finance, set against a wider discussion by scholars of regulation about the aspiration for such gatekeeper roles.

Because regulatory bodies often lack resources adequate to the scale of their oversight responsibilities, many regulators employ some form of third-party enforcement, by which someone other than the direct target of the regulation assists in the process of monitoring or disrupting violations of regulation (Bardach and Kagan 1982; Kraakman 1986). Enforcement by the FEC depends heavily on third parties to identify violations of campaign laws (Lochner, Apollonio, and Tatum 2008), and shares in the approach, now common in contemporary regulation from toxic pollution to mortgage lending, that organizations disclose information to the public (Graham 2002; Fung, Graham, and Weil 2007: 41). This requires confidence that the insights and disclosures provided, as required by the law, are full, accurate, and trustworthy in the face of resistance and outright secrecy (Hood and Heald 2006; Ben-Shahar and Schneider 2014; Sagar 2013). In the electoral context, disclosures about fundraising could provide opportunity for the public to consider a candidate's loyalties before Election Day; violations of campaign finance law could provide opportunities for voters to hold officials accountable the next time (Gaskins et al. 2018).

In many areas of public policy, third parties are simply empowered to report information, such as school

teachers being required to report suspected child abuse, before the burden of enforcement passes to someone else. In other areas, an important strategy for ensuring full disclosure of information has been to make particular individuals ethically or legally accountable for the information produced by an organization. The third-party enforcer then may be motivated by the threat of personal liability when they fail to exercise due diligence or to pass on information they possess, thereby becoming complicit in the crime. The rhetoric of ethics and a sense of responsibility may also take hold among individuals who take on this role, such as among lawyers who believe they have an obligation to the public interest (Schmidt 2012).

As a specialized type of third-party enforcers, gatekeepers are obligated additionally to frustrate the illegal act by denying support or approval (Kraakman 1986: 54). For example, though variably enforced through the years, employers are required to verify immigration status when hiring employees. Doctors risk losing their medical license if they allow access to controlled substances, such as steroids and those used for suicide. Notaries possess a seal that guarantees certain legal documents as trustworthy.

The term "gatekeepers" may not be widely employed in practice, but it appears in many regulatory designs, including federal election law. In 1925, the Federal Corrupt Practices Act established unified standards for all federal electoral campaigns, codifying the previously informal role of treasurer and tasking these officials with keeping records of expenditures and donations. Along with improvements in disclosure requirements and the creation of the FEC, the 1971 Federal Election Campaign Act (FECA) also redefined the role of the campaign treasurer. Instead of acting merely as chief record keeper, the treasurer was promoted to the person "responsible for [a campaign's] compliance with the federal campaign finance law" (Federal Election Commission 2005). Underscoring their importance, every federal political campaign must consist of at least two people: a candidate and a treasurer.

The underlying aim of these reforms was to ensure that candidates could not channel money through multiple, shadowy sources—a system made meaningful by expenditure limits (Adamany and Agree 1975). Treasurers became the central clearinghouse over the financial activities of candidates. Treasurers' obligations include filing the form registering the campaign committee, depositing received funds, authorizing all expenditures, monitoring

contributions (ensuring they are from legal sources and do not exceed contribution limits), keeping records (potentially for an audit), signing all reports and statements, and filing all reports to the Commission. These reports, bearing the signature of the treasurers, are the raw data by which the public can determine who is funding candidates for office.

A system of enforcement by gatekeepers depends on the quality of their oversight and their willingness to deny or withdraw support. For the former, the gatekeeper must not be willing or able to turn a blind eye to problems. Placing the onus squarely on treasurers, a 2007 FEC Statement of Policy made clear that the law requires treasurers' "best efforts": not simply their good faith but a showing that they have been diligent in obtaining, maintaining, and submitting campaign information to the Commission (FEC 2007). For the latter, they must have incentive to act effectively when they suspect or discover faults. Gatekeepers can face the same legal consequences as those who commit the crime, or may place their professional reputations on the line (Kraakman 1986). For its part, the FEC indeed has threatened that treasurers are liable not only in their official capacities as proxies for the campaign but also in their personal capacities, when they have knowingly and willfully violated the law, recklessly failed to fulfill these duties, or "intentionally deprived himself or herself of facts giving rise to the violation" (FEC 2005: 3). However, the FEC, long seen as a weak, politically compromised regulator (Jackson 1990; Sheppard 2007, Franz 2009, Note 2018), rarely uses this tool.

Much light has been shined on the challenges facing the gatekeepers of markets, including lawyers and accountants (Coffee 2006; Hannes 2010; Tuch 2010) and rating agencies (Lagner and Knyphausen-Aufseß 2012). The accuracy and completeness of financial disclosures relies on the internal controls and the integrity of professionals. Gatekeepers straddle an insider/outsider dynamic: part of an organization's team but sometimes not fully trusted on the inside. Regulators can try to induce active gatekeeping through ethical codes or punitive measures, to stiffen gatekeepers' backbones against the fear of being replaced by a more compliant gatekeeper. The fallout of the 2001 Enron bankruptcy and 2008 banking collapse included a decade-long tidal wave of commentary and regulatory activity seeking to elevate the gatekeepers (see Kim 2008; Bainbridge 2012; Hines 2012).

A surface difference between campaign gatekeepers and their corporate counterparts, which may appear to make it difficult to target treasurers, is that campaigns are less clearly "organizations." The simplest campaigns, such as that of a fledgling challenger, may operate on a shoestring budget with no paid staff and few donations. Campaigns are by their nature "ephemeral entities" (FEC 2005: 3). This creates a problem of accountability: What disincentives are sufficient to discourage a challenger's campaign from violating campaign finance regulations, knowing that any penalties will be incurred after Election Day? Yet, without even addressing parties and political action committees (PACs), many campaigns have the hallmarks of organizations, especially in national races—which have now exceeded \$1 billion in the case of presidential campaigns—and House and Senate incumbents with paid, permanent, and professional staff in multiple cities.

The size of modern campaign operations increases the need for internal controls, only some of which are provided by the current treasurer's role. A treasurer's legal responsibilities focus primarily on the technical obligations of accounting for receipts and expenditures, leaving many areas of potential development for internal controls, often in areas requiring more discretionary judgments. As discussed later, some treasurers do step beyond their minimal role. For example, while treasurers must ensure that contributors do not exceed caps on donations, some help a campaign assess whether they should take money from particular individuals or groups. The gatekeeper created by federal election law nevertheless appears narrow when set against the range of campaign activities that bear on good government. Regarding expenditures, for instance, treasurers hold responsibility for disbursing funds, but candidates may hold the real control over how funds are spent (Garrett 2010a: 3), which is how issues of nepotism and improper influence often arise. Similarly, no designated voices of restraint or institutionalized internal controls speak to many concerns about particular forms of fundraising or the amount of time that candidates (especially incumbents) devote to fundraising.

An effective gatekeeper is embedded in the operations of an organization. Under election law, the campaign treasurer is the midwife of the campaign and is central to the regulatory scheme. But, as discussed in the next section, in practice treasurers

have turned their embedded work into a narrow accounting function, and their authority is easily side-stepped. The marginal role of treasurers today isn't evidence that they can't live out the gatekeeping function. It is evidence of a policy that failed to take root as campaign finance came to happen in practice. A policy failure (McConnell 2015) is an invitation to understand why and what futures are possible. Before contemplating any effort to amend the role of treasurer in overseeing and reporting campaign activities, the next section sheds more light on the role that campaign treasurers have come to inhabit.

CONDITIONS OF THE WORK

Given how completely campaign treasurers have faded from scrutiny since the role was designed, some necessary first questions include: What are their backgrounds? What type of work do they do? What role does this give them in campaigns? To answer these questions, the following sections utilize a set of data from a series of broadly ethnographic interviews with treasurers, national political law lawyers, and Federal Election Commission staff. We begin by describing our research methods.

Fieldwork in campaign finance

The research supporting this article incorporated interviewees at different levels within the world of campaign finance, focusing on the transparency of campaign organizations and the work of producing disclosures in compliance with election law. A total of 41 individuals have submitted to semi-structured interviews since 2010, the most recent in July 2017. Interviews have averaged more than an hour long.

One vein of interviewing has been among former and current treasurers in candidate campaigns for federal office. Fifteen treasurers from races in Minnesota and Texas capture different points on the spectra of ideological and political cultures. Reviewing FEC filings, we contacted treasurers when their experience was relatively recent, usually no more than a year after the end of a campaign season. The districts represented in this sample are urban, suburban, and ex-urban; none are vast rural districts or states. These interviewees ranged across the political spectrum: five Republican, six Demo-

cratic, two for independent candidates, and two professional campaign compliance officers (one aligned with Democratic candidates and one more demonstrably nonpartisan). Experience with campaigns for House seats formed a majority, but three had served as treasurers in major-party Senate campaigns and one as a treasurer in a presidential race.

This sample is limited in scope, and a number of relevant variations may be anticipated across federal races. For one, even within similar types of districts, political cultures vary by state. Though a convenience sample driven by pragmatic considerations, Minnesota and Texas helpfully capture distinctly different styles (Elazar 1984, 1999), and campaign finance could be a vital place to be mindful of differences in attitude toward law, corruption, and ethics. Even so, other factors may be even more important, including the relative level of professionalism that may be on display in states such as California and Wyoming. Also, differences in the nature of the media market and the election competitiveness could affect the amount of money raised by the campaigns, the extent of out-of-district contributions, and the level of third-party participation and interest in the races. The multiplicity of variables points to the desirability of a nationwide survey of campaign treasurers, which would provide the scale of responses necessary to tease out how those factors bear on their work. That project is beyond the scope of this study, but given the near-total absence of research on campaign treasurers, exploratory work is vital in order to raise hypotheses and guide larger-scale work based on more than hunches (Stebbins 2001: 30).

An important challenge with the sample, and as discussed later, was that even though interviews have occurred mostly among relatively ambitious campaigns—including campaigns with budgets over \$1 million—in metropolitan areas of relatively politically sophisticated states, a very high percentage of interviewees (whatever their personal qualifications) had little prior experience as treasurers. The challenge of interviewing treasurers led directly to another vein of interviewing in Washington, DC, among leading political law lawyers who by definition are repeat players in campaign finance. Thirteen attorneys were selected, first by beginning with consulting the Chambers ranking of top political law attorneys and then by using a

“snowballing” technique, common to sociological research, in which interviewees were asked to name other good candidates for interviews. Snowball sampling is especially appropriate for elite networks such as the very small ranks of election lawyers, and the frequency of the same names mentioned establishes the boundaries of that community (Neuman 2011: 269). This vein of interviews represented a significant percentage within the small community of leading political law (or “election law”) lawyers. By political identification these lawyers were split, seven Democrats and six Republicans. Their background included extensive experience with campaigns—their clients—and as attorneys their primary work was to advise campaigns of all types on matters of compliance with FEC rules. Most had represented campaign committees or treasurers under FEC investigation. This cadre of elite national lawyers possessed broader bases of campaign experience and they complemented the reports of individual treasurers.

Ultimately, we found that the experiences and perspectives of repeat-playing attorneys corroborated the detailed narratives of one-shot treasurers. While for the ethnographic material reported in this article we draw heavily on the voices of those treasurers, we have woven the perspective and validation provided by the Washington, DC-based interviewees into this analysis.

Also in Washington, DC, the fieldwork included interviews with four senior civil servants in the Federal Election Commission in key positions, staff members in four interest groups, and staff in five national election compliance consultancy firms. Interviews with FEC staff further allowed us to ward against confirmation bias based on the prior statements of treasurers and election law lawyers, asking questions about their observations of disclosure practices and enforcement challenges.

Over the span of the research, little effect has been observable due to changes in election law. The FEC, at loggerheads amidst contemporary partisanship, has changed little that affects the work of treasurers in individual campaigns. As discussed below, the Supreme Court’s growing commitment to First Amendment rights in campaign finance affects the landscape, but again, not in ways that affect the in-the-weeds work of reporting disclosure managed by treasurers. Future decisions concerning the anonymity of donors may one day sharply change this work, but no changes relevant to what

is reported in this article were palpable during the period of study.

This work has allowed us to build a quasi-ethnographic understanding of the work of campaign treasurers. Mindful that qualitative research among elites inherently challenges scholars in the areas of generalizability and reproducibility, the first goal here is to build a faithful portrait of micro-level dynamics that invites and guides future testing. Interviews of a common type shared a semi-structured set of questions that began by inviting interviewees to describe their work. When moving between interviews of various types in the field, the logic of inference involves making tentative hypotheses and submitting them to scrutiny by seeking further interviews that, by hypothesizing the effect of all variables, might be expected to produce different answers (Collier, Brady, and Seawright 2010). In assembling this data together here, our approach has been to avoid “data mining” and instead to emphasize common threads and account for variation. We took particular care to attend to the interviewee’s characteristics for each quotation, to how particular quotations should be understood in the context of the whole interview, and the possible influence of sampling bias in generating the apparent commonalities that we found in the data. The second goal is to suggest, with requisite humility, plausible understandings about macro-level structures, intriguing directions for public policy consideration, and connections between the case at hand and wider concerns about disclosure and gatekeepers as a regulatory phenomenon.

Becoming treasurers

Recruitment to the position of treasurer forms the foundation of how putative gatekeepers see their work. Overwhelmingly, both in our sample and indirect reports of lawyers who work with many campaigns, treasurers are largely either accountants or lawyers, and sometimes both. In this sample, only one treasurer did not follow this pattern, a veterinarian who volunteered the difficulties he encountered due to his lack of legal or accounting experience. As one treasurer put it, “if you are not a lawyer or accountant, you should not be doing this” (Anonymous Interview #11, hereafter “AI”). “Too often,” said one Washington, DC, attorney with deep experience litigating campaign finance violations, “a lot of first time candidates come into it and they just let

grandma do the books or Uncle Freddie who was treasurer of his high school senior class . . . [Candidates] just don't believe that having somebody who really knows his stuff is important from the outset" (AI #17). The bookkeeping work required of a treasurer means that standard accounting practices must be acquired on the job if not already possessed. One interviewee went further, claiming it forms the basis of a candidate's trust, noting that "there's something about [the] integrity [that comes with being a certified public accountant (CPA)] that [candidates] like" (AI #12). Displaying some professional competition, treasurers with accounting backgrounds disputed the necessity of a law degree, and one went so far as to say that having a law background as a treasurer "would be disastrous in my mind" because they would be "unable to put the pieces together in terms of watching the receipts and the disbursements" (AI #6).

Naturally, treasurers with legal backgrounds sharply disagreed, with one lawyer viewing accounting as too narrow a specialty in order to ask "all the right questions," such as

Who really gave you that contribution? Have you gotten contributions in-kind? . . . What's meant by the definition of cash balance at the end of the reporting period? These are all things that are defined in regulations and statutes. You need to breathe life into the numbers. You need . . . an understanding of the law so that you ask the right questions . . . as opposed to just getting some numbers that a staffer gives you. (AI #7)

While both professional persuasions bring expertise to the work, much of the time involved in campaign accounting asks for nothing more than totaling donation checks, routine work that is easily performed by nonspecialist campaign staff. Professional knowledge, while useful, can seem superfluous, especially in smaller campaigns. If a campaign has "good back office people," and has "controls" in place, even the passionate CPA quoted above thought that "someone [with] a nonfinancial background can probably serve in this role quite well" (AI #6).

Also contributing to the dynamics of recruitment to the role, the cyclical nature of campaigns interrupts their service and promotes amateurism. Unlike gatekeepers in some sectors who work in the same professional role across a variety of clients over a career, campaign treasurers typically serve just one candidate, meaning that treasurers spend

much of their service on the steep side of the learning curve—and then leave the political arena. Excepting major-party presidential campaigns in particular, for which treasurer roles are staffed by "very skilled inside people . . . very professional people" (AI #29), hiring is timed to the short cycle of a hopeful primary campaign, often fledgling operations that choose based on familiarity and trust. Treasurers may join the campaign not out of a sense of wanting to be treasurer but because they are asked. A common refrain from treasurers of diverse backgrounds is the prior friendship or trusting relationship between treasurers and the candidate or campaign staff:

I got involved because the candidate who was running happened to be a friend of mine and he . . . wanted some people that he could trust. (AI #8)

I was there at the beginning. [The candidate] was a good friend of mine, and we decided to run for Congress. Really, it was just the two of us in the beginning and, well, since he couldn't be the treasurer, I was. (AI #11)

I had the opportunity through one of my clients, [who] was the campaign manager . . . [he] was looking for someone that he could feel comfortable with. (AI #6)

Unlike lawyers and accountants doing corporate disclosure work, many never apply or bid for the work. Once recruited, treasurers in our sample focused on the honor of the job and "wanting to help candidates that [they] believe in" (AI #12). One step removed from federal campaigns, but following a similar approach, one published handbook for running local elections leads off by advising that "a capable volunteer who has attention to detail can serve as the campaign treasurer" and instructs that "loyalty is more important than experience" (Shaw 2014: 25). This path creates problems of accountability, because the motivation of seeing their candidate to victory may rank too high, and campaigns may place too much weight on personal loyalty. In other fields with professional counsel, representing the "best interest" of clients more richly includes opportunities to guide them toward pro-active compliance (Schmidt 2005: 207). For that to emerge, the treasurer's wish to help the candidate win must be balanced either by personal incentives (including personal fear of the consequences) or socialized belief, such as an ethical commitment to a norm of campaign transparency. And mere loyalists don't protect the campaign. If

he has a say, a Washington, DC, lawyer and consultant would always advise that, “whoever your treasurer is has to be somebody who has enough juice ... that they can actually get accurate information, demand accurate information, and have some confidence” in the reports they file (AI #36).

Treasurers often accept their position in spite of, rather than because of, their knowledge of campaign finance law. Indeed, many treasurers come into the job with little or no knowledge about the duties or responsibilities of the position, contrary to the FEC’s advisement that treasurers should “have a basic understanding of ... the treasurer’s responsibilities” (Federal Election Commission 2005). When asked what their treasurer experience was when they first started, the replies ranged from “I didn’t know much about it” (AI #8) to “I had no experience” (AI #6). This was true of most treasurers in this sample, which stretched across congressional, Senate, and even a presidential campaign.¹ Underscoring his naïveté and inexperience, one treasurer did not comprehend the consequences of his legal responsibility for a full six months, saying he hadn’t realized what he had gotten into until “about ten minutes before I had to get my second filing in. [The campaign software] was broken, and I couldn’t get ahold of tech support, and the entire time I’m just thinking, I’m gonna have problems. I mean, I was in a panic” (AI #11).

The FEC offers some support, with their Campaign Guide, a packet of information, frequently relied upon as “the bible” (AI #13). An FEC hotline provides free advice on a wide range of issues including the reporting rules and the FEC’s free filing software (FECfile). One respondent working as a campaign compliance officer described an FEC training conference as “her best training” (AI #12), but she was the only person in this sample to report attending such a meeting. Looking beyond the FEC, a treasurer described how a fellow party candidate offered, “anytime you want, just call my treasurer, you’re new to the game and he’ll help you out” (AI #7). But it isn’t clear that these resources are sufficient to imbue treasurers with a deep sense of their commitments as gatekeepers.

Treasurers must invest much effort on the learning curve of campaign finance—a very complex legal regime governing a very fast-paced and stressful burst of activity. With most treasurers describing that “we learned by fire” (AI #6) in the midst of the campaign, and then never applying that experience

to future campaigns, the limits of what they try to do in their role are unsurprising.

Engaging the work

Having busy careers as lawyers and accountants, many treasurers are not willing or able to drop everything for one year’s service to a political campaign. In practice, then, it is common for treasurers to hold limited day-to-day responsibilities and primarily serve as signatories. Except for the run-up to filing periods, and for some, the run-up to Election Day, treasurers reported not devoting more than a few hours per week to this job. All kept their day jobs while performing their treasurer duties and rarely went into the campaign office. Expressing a typical sentiment, one treasurer noted that he did most of his work “at 11:00 p.m. at night, emailing with the finance assistants” (AI #11).

A simple spectrum quickly emerged during the course of the interviews regarding treasurers’ level of involvement. At the high end of involvement was one treasurer from a Senate campaign who reported to having devoted himself to his task, putting in over 30 hours per week in addition to his full-time job. He described himself as being in regular communication with the candidate and campaign manager. More commonly, it appears, the role of the treasurer was but one aspect of their lives competing against many distractions. Some are distracted by their continuing professional work as lawyers and accountants; others may be active “politicos” for whom being treasurer is just one of the many hats they wear during the campaign. While still moderately involved in reviewing the campaign filings, the details fall to staff. Said one treasurer, “I’m a volunteer. [Being an attorney] is my full-time job; [being a treasurer] isn’t. I can’t be there every day. I can’t be involved in that kind of detail; those are paid positions on campaigns” (AI #7).

Yet other treasurers, according to the description of one campaign compliance officer consultant, are “more of a figurehead ... [who] lend their credibility and their status in the community by being the treasurer, but [are] not so often involved in the

¹Candidate campaigns differ in important ways from the work of political action committees and state or national party organizations, though anecdotal evidence suggests that turnover in those positions still creates challenges to building expertise in the role.

actual finances” (AI #12). A treasurer whose “name is on a lot of things” (AI #10) but is not actually involved in the duties of the treasurer may be brought in because they are a well-recognized name among potential donors or because campaigns want to “capture” them and ensure their support. One such individual, who said that he was brought in because the candidate “wanted my name in connection with her campaign,” reported only that he was on the campaign committee that met weekly to decide strategy and that he “walk[ed] in parades” and “volunteered in other ways” (AI #10). This treasurer was clear that he did not feel this treasurer work was his “primary role” on the campaign and that instead his campaign manager was the one “in charge of assembling the data.” Legal questions were referred to the campaign manager, not the treasurer.

Treasurers, both Democratic and Republican, spoke of their distance and disengagement from day-to-day campaign operations. For example, some said:

Even though I had signatory authority over the campaign reports, and signing authority of bank accounts ... on a day-to-day basis my activity was really limited ... I was almost like an outside auditor looking in, rather than someone involved in the trenches on a day-to-day basis. (AI #6)

[T]he campaign treasurer just really isn't involved in the day-to-day campaign and isn't involved in strategic decisions ... I actually [was] surprised how I wasn't as close to it as I had thought I was going to be. (AI #9)

Even the notion of the treasurer being a “signatory” is undercut by the movement to electronic signatures and financial report e-filings. With a signature stored on file electronically, others can step in to provide that imprimatur. One compliance officer whose work consists of aiding treasurers in their duties estimated that only a third of the treasurers with whom she worked were actively involved. At the extreme, a campaign with FEC and Internal Revenue Service (IRS) problems asked her to act as the assistant treasurer, taking over fully for the wholly disengaged—but still legally liable—treasurer:

When I joined the campaign I left [the treasurer] a phone message and said I'm working with the campaign, would you like to discuss it? [I] never heard from him. I've never received an e-mail, never a phone call, and I'm not real sure that he gets all

the copies [of the FEC reports]. ... [H]e's very hands off. He's trusting that the campaign is fine and doing a good job. (AI #12)

From their experiences, FEC staff paint a similar portrait of disengaged treasurers who were chosen, according to one, “not for his skill set but for who he knows” (AI #20). Even in training conferences and dialogues with campaigns, another FEC staffer echoed, “the people that we deal with most of the time, the people doing the reports, are not the treasurer. It's other staff” (AI #19). Campaigns that lack good internal controls are more likely to land in legal trouble. Not surprisingly, then, a cross section of top political law lawyers in Washington, DC, find “situations where the treasurer actually does the work [to be] pretty rare” (AI #22).

Federal election law undercut the accountability of treasurers when it provided a framework for an “assistant treasurer” within the organization of political committees. Assistant treasurers can sign documents in the absence of the treasurer but are not held legally responsible for any errors in filing reports. Under the law, the assistant can “assume the duties and responsibilities of the treasurer in the event of a temporary or permanent vacancy or unavailability of the treasurer” (FEC Record 2017). But the interpretation of “unavailable” has become expansive in practice, allowing others to take on virtually all the duties of treasurer, even when the treasurer is available in most meanings of the word. It is in this space that consultancy firms have found a niche: if campaign treasurer work is a secondary implementer, then it can be easily outsourced, especially where technologies for recording and reporting voluminous donations impose start-up costs on campaigns. Outside consultants sometimes get hired for specific tasks, under an array of job titles, such as “compliance person,” “consultant,” and “accountant.” Despite how common consultants and compliance firms are becoming, the lack of standardization in job title suggests that their duties are ad hoc, just as the standards of training and oversight vary. Outsourcing isn't an evil per se; it's the delegation from an appointed treasurer that challenges accountability and warrants further research.

To be sure, many treasurers do have *some* involvement in the financial disclosure process. The primary role for many of the treasurers involves reviewing and checking the accuracy of campaign FEC reports. One treasurer claimed, we “really do

it right” (AI #13). Doing it “right” meant carefully checking the accuracy of the cash balance, expenditures, and contributions, and reconciling the three against one another, as a double check on the reported totals. While an important type of financial management—and some campaigns do land in legal trouble for improperly reporting contributions and cash on hand—this duty is also very narrow. The fit between the columns on the balance sheet and the lines on the FEC reports is one of the easiest problems for the FEC to spot, but such an exercise reduces accountability to a technical enterprise, unlikely to reveal serious corruption.

Treasurers go further when the consequences of violations for a campaign, more than FEC penalties, push them into action. Recognizing from prominent past examples that campaigns must avoid connections to “unsavory character[s],” including felons, controversial PACs, or others that “politically ... wouldn’t look good” (AI #12), treasurers are quicker to monitor that no contributors exceed the contribution limits, in-kind contributions (noncash) are reported accurately, donations are made from individuals’ personal funds rather than corporate employers, and contributions come only from U.S. citizens. The sensitivities here are political as much as legal. A partisan gatekeeper who wants their candidate to win wants to build a wall to keep the wrong donors away. Even with the best of intentions, treasurers who are underutilized in some periods cannot adequately maintain quality control during busy periods. For sense of the scale, one treasurer described having three days to review 5,000 transactions and 1,500 pages of FEC reports (AI #6). In the face of such volume, some treasurers describe a meticulous process of review while others, quite openly, confess to being hands-off.

In sum, the qualitative evidence from the field points at a situation in which the legal aspirations for the treasurer only weakly correlate with the work they do in the field. Treasurers can be at the center of campaigns, but frequently are gatekeepers in absentia.

EXPLANATIONS AND IMPLICATIONS

The marginalized role of the treasurer that has evolved is the product of the cyclical, ephemeral political campaign environment and a regulatory regime that has not made treasurers more account-

able for their campaign’s activities. This section seeks to consider directions that could deepen a role for treasurers as gatekeepers, even as the underlying model of campaign finance regulation itself is being transformed.

Seeking professionalization

As evidenced by burgeoning scholarship, professionals, especially political consultants, have remade the landscape of electoral politics (Kolodny and Logan 1998; Thurber and Nelson 2000; Johnson 2007; Sheingate 2016). Professionals fill different roles, from high-level strategists, to specialists such as fundraisers and lawyers, to vendors purveying tangible services (Johnson 2000: 39–41). The treasurer in both concept and practice resides far from the strategic heart of campaigns; they might be seen as “implementers” (Garrett 2010b: 42) wading in the torrent of money flowing in and out of campaign operations.

But this approach risks overlooking how professionalism does not simply mean “paid employment”—as opposed to volunteers—but also provides resources and responsibilities. Gatekeepers may be implementers on a daily basis, but the role asks treasurers to stand up: to withdraw support and potentially veto the choices of the strategists, such as to accept particular donations or shift funds for strategic advantage. What’s more, unlike the significance of consultant professionals in guiding campaigns through campaign crises (Garrett 2010b), gatekeeping gives treasurers the authority to raise challenges, moments when a campaign’s values will be defined. Professionalism, as developed by sociologists, is a rich concept describing the grand bargain undertaken by an occupational group. In exchange for status, financial rewards, and some form of autonomy from state regulation—think doctors or lawyers—a professional group accepts the need for a self-regulating ethical code and a sense of duty to the public interest (Abbott 1988; Abel 2003: 471).

Treasurers do not currently partake in such a contract. One volunteer treasurer appreciated that his free service made it easy to “leave [the campaign] and not feel uncomfortable” (AI #6). By his thinking, “the minute that I started getting paid [for my work was] the point where if something took place that I did not approve of, or that I did not feel comfortable with,” he might not be able to break with a campaign so easily. But that discomfort

could also fuel a treasurer's interest in taking ownership of a campaign's ethics. Professionalism creates obligations; amateurism allows for exit.

Even in the favorable conditions of two major urban centers, in midsize to large states (Minnesota and Texas), with sophisticated statewide campaigns (see Kingser and Schmidt 2012) and highly educated professionals serving as treasurers, the role of treasurer remains voluntary and, emphatically, transitional. If one should "think twice before taking on the responsibility" of treasurer (Berman 1986: 121), it's clear that many who do it once are even more reluctant to do it again. Even those who have been treasurers do not necessarily identify with the role. For those possessing the professional skills sufficient to do the work, other careers offer greater stability, comfort, and status than the pizza-laden backrooms of a campaign. Because exit from a campaign simply means a return to a normal career path, it is difficult to generate commitment to a common identity and set of professional values, apart from standard accounting practices. FEC pronouncements and enforcement actions do not inspire much interest for those who will never file another FEC report after November.

A few steps toward creating a professional identity have been taken. A California Political Treasurers Association (CPTA), dating to 2003 and claiming 105 members, seeks to support "the growth of political treasurers and their enterprises by conducting research, sharing information and increasing knowledge."² One force helping to drive professionalization is simply the increased complexity of their work, which may be particularly high in California. As one CPTA member claims, in her view "the days of the volunteer bookkeeper/treasurer have clearly passed" (Haley and Jacobs 2014). The related rise of political consulting firms (Sheingate 2016), in addition to specialty groups in accounting and law firms, suggests another avenue by which greater stability in the organization and staffing of campaigns may allow for a stronger role for gatekeepers. A cadre of professional treasurers makes it feasible to contemplate FEC licensure and a requirement that all campaigns employ an approved treasurer. Even so, it is far from clear that a supply of licensed treasurers could ever meet the demand that a licensing requirement would create. An intriguing step to incentivize training in campaign law and to stimulate that supply would be to offer public funding, not to campaigns in general but specifically for a

campaign's employ of a licensed treasurer. The work would remain inherently cyclical for many of those who assume the role, but experience and expertise could deepen.

To overcome the problem for small campaigns, larger gates beget more professional gatekeepers. Perhaps recognizing how professionalism within parties had produced more standardization and centralized control in other campaign services (Goldenberg and Traugott 1984), among many proposals, a number of lawyers once called for greater roles for the political parties in campaign finance, including channeling all donations through the parties (Cutler 1986; Nahra 1987). Such a scheme would entail a wider statutory reform, of course, that is now constitutionally suspect, but the underlying goal remains instructive: the creation of the kind of specialization and professional esprit de corps that could blossom in a more structured environment, such as expanded party operations. As it stands now, treasurers have little at stake. Said one political law lawyer,

The reality is ... if there is a fine to be paid, technically the treasurer's name is going to be on that complaint but the real exposure is always with the corporation or the candidate or the party. ... When a compliance matter comes down, you want to have a person responsible who actually knows that they've actually got some skin in the game so that people aren't playing fast and loose and that's why you need a good treasurer and you want a treasurer who feels some risk. (AI # 36)

Party-based gatekeepers would be highly partisan, of course, and it might be challenging for treasurers to exert influence over party fundraising operations. But these struggles are fought wherever lawyers and accountants seek to enforce internal controls. The necessary move is to empower professionals for the role.

What kind of gatekeeper?

The debate about ethics among gatekeepers in other contexts involves questions of roles and responsibilities: What kinds of inquiries should a professional make? How far should one push? What are

²Website of the California Political Treasurers Association, <<http://cpta.info/>> (last accessed May 4, 2018).

the limits of one's expertise? In short, what should treasurers be required to do?

The treasurers we interviewed were highly focused on the cut-and-dried of campaign income and expenditures, expressed narrow goals, used phrases such as "follow the rules," "compliance with the law," and "accurately [report] our campaign finances" (AIs). These treasurers were naturally aligning their role with the regulations, which are quite precise (but complex) in this area; many regulations call for an answer to be reported in a dollar amount. When asked about topics like soft money, or whether campaign spending could ever be impermissibly coordinated with outside groups, many respondents were quick to distance themselves, suggesting that these issues exist outside their purview. One individual memorably conveyed this mentality saying, "Now, soft money, that's totally different. It's like the wild west" (AI #11). In a comment pointing to the work of other campaign officials to guide soft money donations to legal recipients, one treasurer stressed her distance from all such work:

I didn't have anything to do with the soft money stuff ... this wasn't my job, [the campaign and the finance director] were the ones responsible for making sure that that money went to the right place and that we just got the appropriate amount of hard money (AI #9)

Another interviewee acknowledged his real concern about the possibility of prohibited coordination between the campaign and the national party, but that as treasurer it was beyond his control. That may be why yet another interviewee described *Citizens United v. FEC* (2010) as "an insult which runs contrary to the records we keep" (AI #40): The increasingly influential role of donors operating beyond the candidate campaign means that while treasurers continue to put effort into, say, verifying the identity of each small donation, those donations—and the treasurers—are being marginalized. Many of the big-donor and dark-money issues are instead the domain of leading Washington, DC-based political law lawyers. Most of these attorneys each have a diverse clientele base often including campaign committees, state and national parties, PACs, interest groups, and trade associations.

The differences between treasurers and political law lawyers stem in part from training and approach. In asking both treasurers and elite political

law lawyers to identify gray areas in their work, a number of treasurers plainly expressed the sentiment that "from my perspective it was all black and white" (AI #8). Where they did encounter significant uncertainty, treasurers on well-funded campaigns reported quickly engaging the assistance of counsel. These lawyers expressed more comfort with ambiguity, some welcoming gray areas as opportunities for creativity and flexibility in counseling their clients. Elite lawyers believe that they provide clients with an evaluation of risks rather than a determinate answer. In this posture, lawyer-gatekeepers may not always stand in the way of a candidate who wants to "push the envelope," but that flexibility allows lawyers to gain clients' trust and presents opportunities to have difficult conversations about compliance.

The contrast being drawn here concerns the perspective that professional gatekeepers in other settings are known to bring to their workgroup conversations. The negative tendency among accountancy and legal professionals is to see their work as either merely technical or as a space for "creative compliance" on behalf of their clients, inventing "perfectly legal" solutions that subvert the intent of regulation (McBarnet and Whelan 1991, 1999). The boundaries of professional norms and obligations are contested, as illustrated by a long struggle over the roles of lawyers and accountants under the Sarbanes-Oxley regime. Where more active gatekeepers are found, professionals either directly raise public values (sometimes out of greater concern for their personal liability or reputation) or shape client decision making by presenting the risk calculations in a different light (Schmidt 2012). The ultimate goal of licensure or professionalization is for treasurers to see greater complexity in their work and to take greater responsibility for the public-directed implications of the financial activities of a campaign.

The underlying key to the approaches taken by treasurers remains the FEC's definition of the treasurers' duties and the sanctions imposed for campaigns' missteps. Every campaign's duties for compliance with finance law ultimately flow through the treasurer; those who do that work already understand that their signature promises the fulfillment of legal duties. Though the FEC has, even in recent years, reasserted its intention to hold treasurers liable in their *personal* capacity, that sword has mostly stayed in its sheath. The costs for mistakes are very low, both for campaigns

and treasurers. A number of mechanisms could increase the stakes. A simple requirement that a treasurer hold a professional license would be a start. Though increasing the liability of gatekeepers has its critics (Alzola 2017; Tuch 2017), a credible fear that even campaign violations could result in the loss of a professional license would greatly change the incentives. Some minor-yet-useful changes would be conceptually possible without a complete reform of the FEC, though structural reforms in the commission may be necessary for meaningful changes to be politically viable (see Franz 2009, 2013).

In a more radical reform of the system, requiring statutory amendments, campaigns could be required to employ a treasurer licensed by the FEC; or even public financing of campaign treasurers could provide a purpose to a system of public financing that has fallen into disuse. Akin to the market for gatekeepers in financial regulation (Payne 2015), the incentives of the client and competition among treasurers should be a source of upward pressure for engagement in the activities of a campaign. By embedding treasurers more deeply into campaigns as full-time presences, requiring broader disclosures, raising the risks faced by treasurers, and directing them to take greater responsibility for the activities of both assistant treasurers and the campaign at large, subsequent FEC rulemaking and enforcement directed at treasurers could move away from a system too often dominated by busy amateurs and distracted loyalists.

Regulatory misfits

To be sure, treasurers perform an important service under the current system: the data that campaigns collect and report form the basis for much of what citizens come to know about elections. Those reports, especially when aggregated and summarized by journalists, public interest groups, and even opponent campaigns, shed much light on the flow of money around American politics. The 1970s' scheme of regulation had a greater ambition: to centralize the flow of campaign dollars. The virtue of that approach, from a regulator's perspective, was the relative ease that it could be enforced: the only money to audit would be the money coming through a campaign committee. The "heavy lifting" in this system is performed by the precision of contribution and expenditure limits, and treasurers would be its key executors under the oversight of the FEC.

Debates on the constitutionality of limits on money long preceded the post-Watergate era (see Mitau 1956); and, with changes in constitutional fashion, the notion that all money could be forced to flow through candidates' campaign committees has been severely undermined. *Citizens United v. FEC* (2010) represented the most visible breakdown of that view, extending First Amendment protection to independent expenditures for communications by corporations and unions. The decision in *McCutcheon v. FEC* (2014), removing aggregate limits on individual contributions, reaffirmed the Supreme Court's intention to dismantle regulatory limits on the flow of campaign money. Treasurers may still hold the keys to a single candidate's coffers, but their position has grown even more marginal as other channels of finance have opened up, threatening the sheer obsolescence of a system that was built around the candidate campaign (Gaughan 2017; Garrett 2018).

A key remnant of the centralized model for campaign finance is the bar on "coordination," which builds a wall between a candidate's campaign and independent expenditures by super PACs. Although the Justice Department won a guilty plea in 2015 from Tyler Harber, a Virginia campaign manager and consultant who directed media purchases by a PAC in support of his candidate, coordination has been extremely difficult to monitor and prosecute. Activities by both major parties in the 2016 election were increasingly bold. Numerous presidential candidates were involved with super PACs before publicly entering the race, and once candidates entered, leaks and public statements frequently may have been intended as subtle signals about strategy. Within the current framework of regulation, coordination is one area that cries out for a third party enforcer with a more far-reaching duty of ensuring robust internal controls and the good behavior of the campaign. For this to be possible, treasurers would need to step away from the books and enter into the heart of the campaign.

Ultimately, the treasurer's role needs to be decoupled from the 1970s' framework by redefining the role and requiring a different skill set. The move to license a cadre of professional campaign treasurers would mean taking the time to think about the role of ethics in campaigns. Just as lawyers and accountants were called upon to think more broadly about their duties after the Enron debacle, campaign treasurers could be drawn into a deeper engagement with the public interest in their work. In the course of that engagement, emphasis can shift

from simple accounting practices to the public-sector equivalent of corporate social responsibility ethics officers (Adobor 2006; Treviño et al. 2014; Sampson 2016). In a new mold, the treasurer would be responsible for raising awareness of the connection between campaigning and governance, and between contributions and activities that undermine democracy. The deepest fear could be that enhanced roles for treasurers would only reinforce the worst features of the contemporary campaign finance: the search for different, unaccountable channels for money to circumvent candidate campaigns and influence elections. That is a fear worth anticipating, and a fear answerable by good regulation, should a window for policy reform ever open.

CONCLUSION

Third-party enforcers and gatekeepers are important parts of many regulatory systems, especially those that require organizations to disclose important information to the public. Campaign treasurers formally hold such a role in campaign finance at present, but their contributions appear at the periphery of the electoral process. Though their marginalization is a symptom of other ailments in the American system of campaign finance, a host of problems also come to the fore. The need for campaign treasurers is cyclical and intermittently onerous. Defined narrowly, most of the work is routine and dull. Few are held meaningfully accountable for transgressions, and little more has been asked of treasurers by the timid enforcer that is the FEC. Meanwhile, the wider landscape of campaign finance is pulling away from the model that was originally supposed to empower treasurers as gatekeepers. To the many voices decrying the state of the electoral process can be added the charge that campaign treasurers are not living up to the intentions that inspired them or their potential, and the role is becoming even more peripheral in the changing landscape of money in politics. In sum, treasurers labor on within a system that allows or even encourages them to be marginal—much less servants of ethics and the public interest. Where gatekeepers have been shown to have become conflicted or complacent, such as Wall Street, policymakers have attempted to invigorate the guardians.

Some critics doubt whether the system of campaign finance regulation, passed into law by the poli-

ticians it seeks to govern, was ever really designed to work. The FEC has long lacked legislative support, and its structure virtually ensures that its actions will be constrained. The Commission's approach toward treasurers suffers from the same deficit of accountability, both in the formal obligations that have been articulated and the extent to which regulators have been prepared to hold treasurers personally responsible for the errors and misdeeds of campaigns. Accordingly, the cynic could ask how anyone could have expected campaign treasurers to have become influential. The partisanship of the present era and the extreme unlikelihood of change to the statutory framework make it impossible for all but dreamers to imagine the FEC innovating in the directions that we have contemplated here. Where professionalization has trended upwards, as with the CPTA, it has happened at the grass roots where many conditions happened to align. But cynicism about the prospect of wholesale reform can obscure what could be gained through smaller steps that would encourage the development of treasurers into a more professional and accountable set of actors. These steps, perhaps through state bar associations, could urge treasurers to take a greater voice in the pursuit of a transparent democracy. So long as we have the campaign finance system that we do, such measures are all that stand in the way of a requiem for the third-party gatekeeper.

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Appendix

Core Schedule of Interview Questions/Topics

The semi-structured interviews with treasurers employed a set of recurring questions and topics, with variable follow-up questions and additional topics depending on the interviewee. The recurring questions that served as starting points for further conversation included the following:

A set of questions concerning the position: the length of time with the campaign, whether it was volunteer or paid, whether an assistant treasurer was employed, how many staffers were supervised by the treasurer, what other activities the treasurer performed in the campaign, why the treasurer believed they were chosen for the job.

When you joined the campaign, how did you discuss or negotiate your role with the candidate?

What kind of learning curve did you experience?

How did your prior experience as a [lawyer/accountant] assist you in your work as treasurer?

Please describe the processes and systems you oversaw for handling contributions and expenditures. What were your priorities for each?

What were your daily activities with the campaign? Describe the amount of work the position required.

What issues or questions did you encounter most frequently?

While much of your work may have been routine, what issues or questions arose that stood out as especially challenging or deserving of special attention?

In what ways, if ever, did you consult with or seek guidance from [the FEC/outside counsel/party officials/other treasurers]?

Additional topics: coordination, types of contributors, political-party and third-party spending, the technology employed in the work, experiences with the FEC filing process.

Help me to assess the substantive importance of the disclosures you facilitated. What did it allow the public to understand about your campaign and the election of which you were a part?