

**Money as Speech:
Campaign Financing in the Democratic Process
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American legal culture, as revealed by the ebb and flow of court cases favoring and then weakening government regulatory power, has created a system in which private interests are able to influence public policy decisions. This has limited the representation and participation of citizens in the democratic process. Following USSC rulings, *Citizens United v. FEC* and *Burwell v. Hobby Lobby Stores Inc.*, which recognized corporations as individuals, the rights of corporations to free speech and freedom of religion has been secured in the law. As a result, massive donations to the political system are protected under First Amendment grounds, granting corporations one of the strongest legal protections in the American legal system.

The treatment of corporations as individuals is not only dangerous, but also undermines democracy. The flood of corporate money entering the American political system has a number of negative consequences. Most notably, politicians may be inclined to change their position on key political issues in exchange for corporate donations. This can be viewed as corporations treating political candidates as investments, an idea antithetical to an ideal democracy. Additionally, the strong influence of money in politics has led to a scenario in which politicians are required to spend large amounts of time soliciting funds, both for their own reelection and also to pay for their respective political party's dues. The result is a system in which politicians are forced to take time out of researching and implementing sound policy to instead raise money to maintain their current position in government.

A number of solutions have been proposed for curbing the influence of campaign contributions in the American political system such as the institution of federally financed elections, capping campaign contributions at lower levels to block large donations from wealthy individuals etc. Even though there is equivocalness on the solutions, it is widely agreed in the policy environment that it is important to create a regulatory environment in which the American people can be assured that their politicians are acting independently of corporate interests. A core idea of this essay is the competition between corporations' incentive to freely invest their capital to influence politicians, and the desire to protect voting rights by limiting the degree to which any one individual can sway their representative. Through a careful study of legislations and Supreme Court rulings regarding campaign finance, my essay examines the limitations of money in elections, especially corporate financing of elections.

Legislations to Regulate Election Finance

Legislation for federally financed elections, was first proposed by Theodore Roosevelt, in the State of the Union address in 1907 (FEC, 2014). Roosevelt's proposal sought to limit private contribution in elections by creating

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Campaign Finance

federal funding. Since 1907, a number of initiatives have been enacted to regulate campaign finance and maintain a transparent process. More importantly, in 1966 the Federal fund for elections was established (FEC, 2014). This was followed by the Revenue Act in 1971, which distributed money checked off by taxpayers directly to the nominee (FEC, 2014). The legislation limited campaign spending to all candidates who received the public money and placed a ban on all contributions for that candidate (FEC, 2014). In addition, the 1971 Federal Election Campaign Act required detailed reporting of all campaign contributions and expenditures by federal candidates to ensure transparency in the political process (2 U.S code §431 et seq., Public Law 92-225, 1972). Later amendments extended this act to also cover Presidential primary conventions (2 U.S code §9031 et seq.) and Presidential nomination conventions (FEC, 2014).

The legislations signify an increasing Congressional desire to maintain a transparent political process. The Bipartisan Campaign Reform Act of 2002 (BRCA) is an excellent example to elucidate this commitment to regulate party fundraising and limit political spending. BRCA even regulates soft money and electioneering communications (FEC, 2002). The BRCA

bans national party committees from raising or spending money outside the limits of the Federal Election Campaign Act..including soliciting, receiving, directing, transferring or spending soft money in connection with federal elections and limits their ability to do so in connection with state elections (FEC, 2002).

What is interesting to note here is that the Supreme Court has upheld the campaign finance regulations, although tempered. Both in *Buckley v Valeo* and *McConnell v. FEC*, the court rulings demonstrated that regulation can be a valid guide for campaign finance regulation. However, this position significantly shifted in the *Citizens United* and *Burwell* rulings.

Campaign Finance and the Court

Throughout America's legal history, the Supreme Court has made several rulings regarding the validity of restrictions on campaign financing. The Court's position in the early cases after Congressional efforts to regulate campaign finance was sympathetic to the government's efforts to curtail the corrupting influence of money in politics. However, this shifted in 2010, and since then the court has taken a more stringent stand in favor of the right of private entities to contribute money to their politicians to the extent of providing free speech protections. The court has eased many of the restrictions of the early years and opened the process to potential donors and spenders, with very few limits on their activities (Biersack, 2018).

Buckley v. Valeo

In 1976, New York Senator James Buckley challenged the constitutionality of the Federal Election Campaign Act (FECA) and the Presidential Election Campaign Fund Act in the US District Court for the District of Columbia (FEC, 1975; 1976). The defendants in the case included, Francis R. Valeo, Secretary of the Senate and Ex officio member of the newly formed Federal Election

Commission, and the Commission itself (FEC, 1975). The Federal Election Commission Act (FECA) was enacted to implement restrictions on financial contributions to candidates and reporting of contributions beyond the stipulated threshold amount. The appellant's claim was that the limits on electoral expenditures by FECA violated First Amendment's freedom of speech and association clauses.

The Supreme Court upheld the limitations on campaign contributions for federal candidates, the disclosure of campaign financing in the FECA and the public financing of federal elections. The Court argued that campaign contribution limits and the disclosure provisions, constitute the Act's primary weapons against the reality or appearance of improper influence over government affairs stemming from the dependence of candidates on large campaign contributions (*Buckley v. Valeo*, 1976). The contribution ceilings, it ruled, serve the basic governmental interest of safeguarding the integrity of the rights of individual citizens and candidates to engage in political debate and discussion and hence did not violate the First Amendment (*Buckley*, 1976). The Court held the limitations of the FECA enrich the "integrity of our system of representative democracy" by guarding against political corruption (*Buckley*, 1976). In fact the Court was clear in rejecting the claim that the contribution limits discriminate against minor and third parties by stating that the limits may benefit minor parties because major parties receive a larger amount of their money from large contributions (FEC, 1975).

With respect to the expenditure limits, the Court stated that

these provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate (*Buckley*, 1976, p. 424).

The Courts position was that since these practices do not have potential for corruption, limiting them did not serve a greater governmental interest to necessitate a restriction on Free Speech. The claim that campaign contributions are protected as a form of free speech is the bedrock for a larger argument favoring the ability of corporate interests to invest in the American political process. Donations provide donors with a greater opportunity to contribute to political discourse, as well as offering them the ability to launch advertising campaigns to communicate their ideologies. The Court successfully identifies, however, that allowing wealthy Americans to inject money in the political process risks undermining the ability of other segments of society to be heard by their representatives, effectively limiting the ability of some segments of society to exercise free speech.

The *Buckley* case provides an argument favoring the regulation of private money in the political process by pointing out the negative impact that this funding could have on the American democratic system. Although it did not go as far as FECA, but by supporting the use of contribution limits and explaining the zero sum nature of free speech, the Court establishes that vast sums of private money in politics may work against democratic ideals. This ruling epitomizes the

Campaign Finance

Supreme Court's recognition of the need to curtail the influence of money in politics as a means of preserving the rights of less wealthy Americans. This trend continued in the *McConnell* case, which supported the role of the state in protecting democratic expression from corporate interests.

McConnell v. FEC

The *McConnell v. FEC (2003)* case brings into question the constitutionality of the Bipartisan Campaign Reform Act's (BCRA). BCRA's key objective was to reform the process by which money is raised for--and spent during-- political campaigns, including soft money. The key provisions included in BCRA a) restricted soft money donations made directly to political parties and on the solicitation of those donations by elected officials; b) curtailed advertising that unions, corporations, and non-profit organizations can engage in up to 60 days prior to an election; and c) limited political parties use of their funds for advertising on behalf of candidates (*McConnell, 2003*). The case challenged Congressional authority to impose ban on soft money and regulate the source, content and timing of political advertising, as it was argued to be a violation of First Amendment's free speech clause?

Since the regulations introduced in the BCRA dealt with mostly soft-money contributions and not with campaign expenditures, the Court held that this was not a restriction on free speech, rather it served a governmental interest in preventing "both the actual corruption threatened by large financial contributions and... the appearance of corruption" (*McConenell, 2003, p.4*). The Supreme Court opined that

the Government defends §323(a)s ban on national parties involvement with soft money as necessary to prevent the actual and apparent corruption of federal candidates and officeholders. Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits (*McConnell v. FEC, 2003, p. 33*).

Ruling in support of contribution limits, the Supreme Court made clear in *McConnell (2003)* that there is substantial evidence in these cases to support the determination by Congress' that such contributions of soft money give rise to corruption and the appearance of corruption (*McConnell, 2003*). The Court noted "for instance, the record is replete with examples of national party committees' peddling access to federal candidates and officeholders in exchange for large soft-money donations"(*McConnell, 2003, p.41*).

This rationale significantly strengthens the legal argument that can be made for the Court's ability to enact contribution limits for the purpose of reducing corruption. This demonstrates a clear linkage seen by the Court between money in politics and corruption, providing grounds for the judiciary to take action to reduce the availability of private money in the political system. In addition to contribution limits, the Supreme Court also restricted the use of corporate and union money from being used in electioneering communications (FEC, May 2002). These restrictions helped to lessen the potentially corrupting

influence of money in politics by distancing corporate and union money from the outcome of elections. To this point, the court stated “Because those entities may still organize and administer segregated funds, or PACs, for such communications, the provision is a regulation of, not a ban on, expression. *Beaumont*, 539 U.S., at ____ (slip op., at 15)” (*McConnell*, 2003, p.98). What is noteworthy in the Court’s position in this case is the fine distinction it drew between regulating and forbidding freedom of expression. However, this support for campaign finance regulation, notable in *Buckley* and *McConnell* was reversed in *Citizens United v. Federal Election Commission in 2010*.

Citizens United v FEC

Following *McConnell*, Citizens United challenged the restrictions on electioneering communications, and the limits on corporations and labor unions to fund such communications. This arose in the context of a film-Hillary: The Movie-which Citizens United wanted to show prior to the elections, but was restricted due to federal election commission rules about electioneering communications. The film centered on whether Senator Hillary Rodham Clinton would make a good president. The questions raised in *Citizens United* opened a further examination of the constitutionality of BCRA especially with regards to its application to political speech, which is not campaign speech.

In 2010, the United States Supreme Court, in the *Citizens United v. Federal Election Commission* ruled on the constitutionality of the Bipartisan Campaign Reform Act (Sullivan, 2010). The case focused on the constitutionality of the restriction on unions and corporations from spending general funds for “...electioneering communications’ or for speech that expressly advocates the election or defeat of a candidate” (Sullivan, 2010). Overruling portions of *McConnell v. FEC* the majority held that under the First Amendment corporate funding of independent political broadcasts cannot be limited by BCRA. Upholding the value of free speech to a democracy, the majority maintained that this includes corporations as well. The Supreme Court argued against contribution limits and opined that the First Amendment provides that ‘Congress shall make no law ... abridging the freedom of speech, and this included corporations. The majority opinion held that “§441b’s prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions” (*Citizens United*, 2010, p.3). It was argued in *Citizens United* (2010) that

We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical pre-election period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing quid pro quo corruption (p.45).

Campaign Finance

In a 5-4 decision, the U.S. Supreme Court ruled that corporations and unions have the same rights to political speech as individuals under the First Amendment. It found no compelling government interest for prohibiting corporations and unions from using their general treasury funds to make election-related independent expenditures (Sullivan, 2010). The Court even overruled the holding in *Austin v. Michigan Chamber of Commerce*, which has established the constitutionality of the existing contribution limits on electioneering communications (*Citizens United*, 2010). The Court held that

Austin is overruled, and thus provides no basis for allowing the Government to limit corporate independent expenditures... No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations (*Citizens United*, p. 50).

The Supreme Court further observed that the expenditure bans that applied to individuals, corporations, and unions did not fall under the quid pro quo category established in *Buckley* to limit direct contributions to candidates, and therefore were not protected by that precedent (*Citizens United*, 2010). Thus, the Court allowed for the restricting of direct contributions to candidates, but not independent expenditures, which according to the Court did not count as corruption (Sullivan, 2010). The Court opined

While a single *Bellotti* footnote purported to leave the question open, 435 U. S., at 788, n. 26, this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy. *Caperton v. A. T. Massey Coal Co.*, 556 U. S. ____, distinguished (*Citizens United*, p. 40-45).

McCutcheon v. FEC

In 2014, the United States Supreme Court made another ruling on campaign finance reform in the case *McCutcheon v. FEC* (*McCutcheon v. FEC*, 2014). In this decision, the Supreme Court, struck down the aggregate limits on individual contributions during a two-year period to all federal candidates, parties and political action committees combined (*McCutcheon*, 2014).

The case arose due to a controversy over biennial limits, which inhibited Alabama resident Shaun McCutcheon from contributing in the elections. In the 2011-2012 election cycle, he had

...contributed to 16 different federal candidates during the 2012 elections, complying with the base limits applicable to each (i.e., \$2,500 per candidate, per election) ...(After having met the aggregate biennial limit, Mr. McCutcheon could not contribute to)... another 12 federal candidates

and to a number of non-candidate political committees, including the Republican National Committee (*McCutcheon v. FEC*, p.1).

Consequently, Mr. McCutcheon and the Republican National Committee filed a complaint on the grounds that the biennial limits violated the First Amendment (*McCutcheon v. FEC*).

Chief Justice John G. Roberts, Jr. delivering the opinion for the four-justice plurality held that the aggregate limit curtailed participation in the democratic process and was not effective in meeting the stated objective of BCRA, which is addressing political corruption. In *McCutcheon* (2014) Justice Roberts opined

With the significant First Amendment costs for individual citizens in mind, we turn to the governmental interests asserted in this case. This Court has identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption.... We have consistently rejected attempts to suppress campaign speech based on other legislative objectives.... Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to such quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner "influence over or access to" elected officials or political parties. *Id.*, at 359; see *McConnell v. Federal Election Comm'n*, 540 U. S. 93, 297 (2003).. And because the Government's interest in preventing the appearance of corruption is equally confined to the appearance of quid pro quo corruption, the Government may not seek to limit the appearance of mere influence or access (*McCutcheon*, 2014, p. 18-19).

Since the aggregate limit fails to meet the "rigorous" standard of combating corruption, from a First Amendment perspective it is unconstitutional as it unnecessarily curtailed an individual's freedom of speech. The plurality maintained that corruption could be controlled by other means than setting the aggregate limit.

Implications of *Citizen's United* and *McCutcheon* on the Democratic Process

Citizens United and *McCutcheon* show that Court rulings, by granting private entities increased protections similar to individuals, have legitimized the power of corporate entities and the sway of outside groups over political parties and election campaigns. This has implications for the democratic representation process as it enables political donations from large donors at the cost of excluding representation of people in the election process. In the 2012 Presidential elections, the majority of the roughly \$1,300,900,000 of campaign contributions came from the east coast, Texas, and California (FEC, Interactive national map). Of the money contributed by individuals, \$675,735,684 came from donations under \$200, \$129,511,373 came from donations ranging from \$200.01-\$499,

Campaign Finance

\$113,173,897 came from donations ranging from \$500-\$999, \$150,215,602 came from donations ranging from \$1,000-\$1,999, and \$345,764,922 came from donations \$2,000 and above (FEC, Interactive national map). The numbers for individual contributions show that roughly 25% of individual contributions come from donations at or exceeding \$2,000 and approximately 35% of individual contributions came from individuals whose donations met or exceeded the \$1,000 mark. While it is no doubt that the rulings have enabled more money to flood into funding elections, it is not clear as to how exactly this impacts our political process.

Analysts have identified two key areas of campaign finance landscape that have been restructured by *Citizens United* and *McCutcheon*: Political Action Committees (PACs) and Lobby Politics.

Political Action Committees (PACs). PACs are entities entrusted to collect campaign contributions for or against a candidate or issue. PACs include committees registered with the FEC-i) the separate segregated funds (SSFs) and ii) non-connected committees. PAC's limited the amount of money individuals could donate for campaign.

Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder, Jr. (2002)

Approximately 4,500 PACs are registered with the Federal Election Commission...The number of active PACs has declined by 12 percent since 1988. Among the active PACs, 1,400 are associated with corporations, 670 are tied to a membership or industry group (such as the American Medical Association), and 240 are associated with labor unions. Another 670 are ideological groups. (p. 8).

In addition to determining how much money PACs spend in politics, it is also helpful to look at how much the PACs spend relative to their contribution limits. Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder, Jr. (2002) estimated that

Only 4 percent of all PAC contributions to House and Senate candidates are at or near the \$10,000 limit. The average PAC contribution is \$1,700. Corporate PACs give an average contribution of approximately \$1,400 to legislators; trade associations and membership PACs give average contributions of approximately \$1,700, and labor union PACs give average contributions of \$2,200...If all 2300 active corporate, labor and trade PACs gave the maximum amount to all incumbents running for reelection to the House or Senate (about 420 candidates), then total PAC contributions would be roughly \$10 billion – 40 times more than what these PACs actually gave in the 2000 election (p. 8).

Supreme Court ruling in *Citizens United* and the DC Circuit Court of Appeals decision in *Speechnow.org v FEC (2010)* completely changed the nature of PACs and led to new campaign expenditure units called the SuperPacs. The Court in *Citizens United* declared that corporations and unions could make unlimited donations like individuals and removed cap on these donations. Hence,

following the ruling in *Citizens United v. FEC* corporations, while labor unions and incorporated membership organizations were prohibited from making direct contributions to candidates or from making "...expenditures in connection with federal elections" (FEC, 2008), they were allowed to sponsor SSFs which could influence federal elections ((FEC, 2008). The core of *Citizens United* is the idea of SuperPacs as completely independent of candidates, and hence the unregulated money from big donors wouldn't be corrupting to lawmakers (Overby, 2015). In reality, this distinction between coordinated and independent action is murkier than it seems.

Additionally, the organizations were permitted to absorb establishment and operating expenses for the SSFs and those expenses are not subject to the limits on contributions (FEC, 2008). SSFs do not have "... to report any fundraising or administrative expenses that are paid for by its sponsoring organization. (The SSF must, however, report these expenses if it pays for them)" (FEC, 2008). Nonconnected political committees must report "...all its operating and solicitation expenses" (FEC, 2008). Further, nonconnected political committees maintained their financial independence. This means that the nonconnected political committee must pay for its own administrative expenses, using the contributions it raises." (FEC, 2008). While corporations may contribute to these committees, the donations are subject to the previously mentioned contribution limits (FEC, 2008). Nonconnected political committees can solicit money from the general public (FEC, 2008, SSFs and Nonconnected PACs).

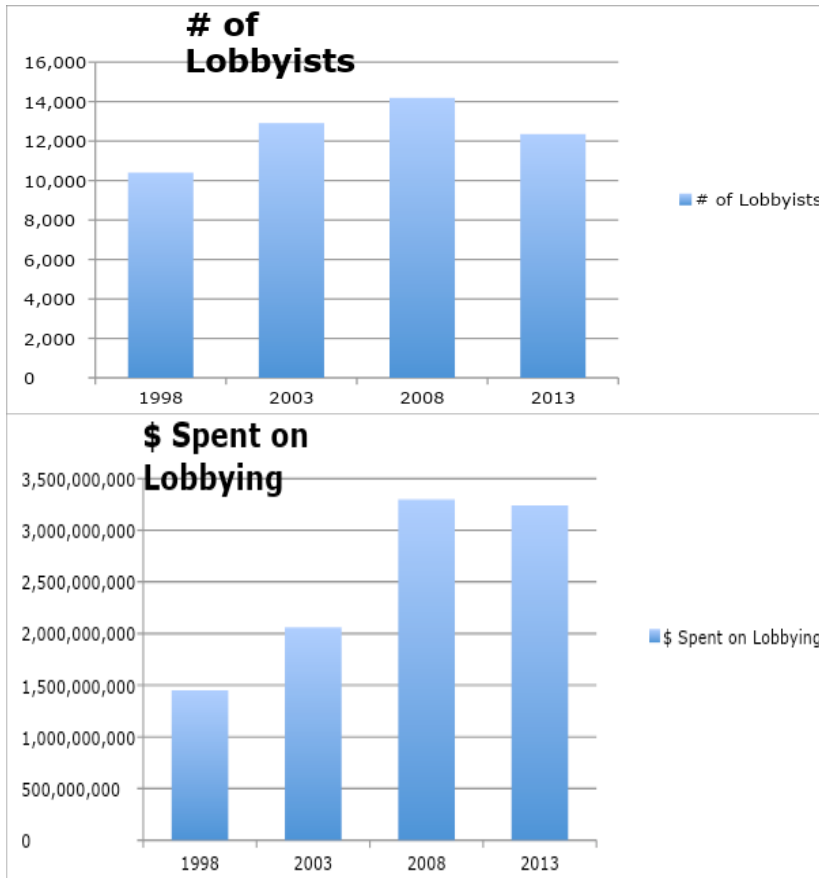
Lobbying. Proponents of federally financed elections argue that lobbyists are a source of politicians' money, and in the absence of restriction on campaign finance, lobbyists donate money to political candidates and sway key public policy decisions. Most organizations that sponsor political action committees such as PACs (or SuperPacs now) also maintain active lobbying operations; as a result, campaign contributions and lobbying often occur together.

Sabato (1984), in his survey of multicandidate political committees, found that 68% of the corporations, unions, and associations with PACs also have lobbying offices or representatives in Washington (p. 124 cited in Wright, 1990, p. 418). John R. Wright argues

since PAC contributions are often rewards for past support rather than inducements for future support, a representative's financial constituency provides important information about the representative's general policy orientation. Strong financial support, or lack of support from particular groups may signal the extent to which a representative can be persuaded, and this information may in turn affect groups' decisions about whether or not to lobby (Wright, 1990, p. 419).

The records from the Center for Responsive Politics on lobbying and money spent shows a direct correlation between increasing number of lobbyists and money spent by organizations (Center for Responsive Politics, 2014).

Campaign Finance



In addition, as Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder, Jr. (2003) have argued lobbying groups spend an incredible amount of money to get the attention of candidates, especially through campaign contributions. They note

Legislators and their staffers are busy people. Campaign contributions are one way to improve the chances of getting to see the legislator about matters of concern to the group. One estimate is that one hour of a legislator's time costs around \$10,000 (Langbein, 1986) (Ansolabehere, Figueiredo, Snyder, 2002, p. 126).

Of course, being able to meet with politicians is not clear evidence of money having a significant impact in politics. The issue arises from what happens during those meetings.

According to a survey implemented by Grossman and Helpman,

SIGs (Special Interest Groups) provide legislators with intelligence of various sorts, including technical information about the likely effects of a policy, assessments of how the legislator's home district will be affected, and information on how other legislators are likely to vote (Grossman, Helpman, 2001, p. 5).

Through buying access to politicians, groups can educate representatives to vote in favor of their own interests. This is not a rare occurrence for some organizations, and can be a common practice for some. Through their study, they found that

99 percent of the groups prepare testimony for congressional or agency hearings, 98 percent meet with legislators in their offices, 95 percent have informal contacts with legislators at conventions, lunches, and the like, and 92 percent present research results or technical information to policymakers (Grossman, Helpman, 2001, p. 4-5).

Interest organizations also spend considerable resources to provide research data to candidates, so as to inform their choices. Grossman and Helpman's (2001) study showed

36 percent of the groups indicated that direct contact with government officials was one of their three most time- and resource-consuming activities (out of a list of 27 choices), while 27 percent identified testifying at hearings and conveying research results and technical information as among their three most consuming activities. No other activities were mentioned as being critical ones as often as these three (p. 5).

This relationship between lobby groups and politicians indicates that organizations can buy frequent access to politicians with large sums of money and use this access to inform representatives about issues in a potentially skewed manner. It points to the possibility that the information received by government representatives would largely come from the organizations that can afford to get access to politicians.

Money in Elections: Why it Matters?

Money in elections refers to the direct financing of campaigns. Money clearly has an impact on elections, although its influence expands when considering the collection of dues and the allocation of government positions. Politicians cannot outright buy votes, but if they raise a large amount of money for their party, they may win endorsements, use of party facilities, and other aspects of party infrastructure that do help to win elections.

Professor of Politics at Princeton University, Martin Gilens argues that the levels of money spend in elections suggests that affluent Americans policy preference matters more than any one else. Gilens (2014) argues

...at thousands of proposed policy changes, and the degree of support for each among poor, middle-class, and affluent Americans. His findings are staggering: when preferences of low- or middle-income Americans diverge from those of the affluent, there is virtually no relationship between policy outcomes and the desires of less advantaged groups. In contrast, affluent Americans' preferences exhibit a substantial relationship with policy

Campaign Finance

outcomes whether their preferences are shared by lower-income groups or not (p.1).

Further, adding to this argument, Martin Gilens and Benjamin Page (2014) claim that

the central point ...is that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while mass-based interest groups and average citizens have little or no independent influence (p. 3).

Second, as Gary C. Jacobson (1985) claim that money usually enables the candidates but the question is not how much but how it is spent. He observes

Taken at face value, the evidence is overwhelming that the challenger's level of spending has a strong impact on the vote, whereas that of the incumbent has virtually no impact at all. But the evidence remains open to doubt on two grounds. One is the probable inadequacy of the 2SLS model... The other doubtful, albeit equally stable, finding is that incumbents do not gain votes by spending in campaigns. No incumbent seems to believe it, and there is at least circumstantial evidence (from, for example, the 1982 elections) that their skepticism is quite justified. If so, the problem lies in the limits of what aggregate data of the kind analyzed here can tell us (p. 55).

Jacobson (1985) goes on to add:

If both candidates spend beyond the point needed to become thoroughly familiar to voters, then the substance of the campaigns, the contents of campaign messages, become the dominant factors... Like non-incumbents, sitting members may sometimes need to spend beyond a certain threshold to remain competitive; but nearly all of them do so when the necessity arises, so aggregate spending data are largely uninformative. How the money is spent, rather than how much, is what matters (p. 56).

Based on Jacobson's argument, federally financed elections would take money away that could otherwise go towards informing voters about public policy issues.

If election spending favors the non-incumbent, then "the greatest likelihood remains that restrictions on campaign money will have the general effect of hurting challengers (Jacobson, 1979 in Jacobson, 1985). Anthony Gierzynski and David Breaux (1991) echo this claim

As in congressional elections, the impact of money on the vote in state house elections depends on who is spending it. While money spent by challengers has a significant impact on the vote in every state (except Nebraska), money spent by incumbents apparently does not. Only in New York and Colorado do incumbent expenditures appear to make a difference in the vote. This result is undoubtedly due to the fact that

incumbents who spend do so because they are in trouble (p. 213).

Some scholars however are not in complete agreement with this assumption. According to a 1994 paper written by Steven Levitt,

Campaign spending has an extremely small impact on election outcomes, regardless of who does the spending. Campaign spending limits appear socially desirable, but public financing of campaigns does not ...an extra \$100,000 (in 1990 dollars) in campaign spending garners a candidate less than 0.33 percent of the vote” (Levitt, 1994, p.780).

To defend the different results of his study, Levitt (1994) says,

Previous studies of congressional spending have typically found a large positive effect of challenger spending but little evidence for effects of incumbent spending. Those studies, however, do not adequately control for inherent differences in vote-getting ability across candidates. “High-quality” challengers are likely to receive a high fraction of the vote and have high campaign expenditures, even if campaign spending has no impact on election outcomes (p.777).

So, according to Levitt, every \$100,000 a candidate spend earns them 0.33 percent of the vote. This \$100,000: 0.33 percent of the vote correlation may be impacted by diminishing returns. For example, after the first \$100,000, the next \$100,000 will only provide a candidate with 0.22 percent of the vote, and the next \$100,000 will provide 0.15 percent. In this case, campaign spending does not offer a significant advantage with this math, although I will also consider the alternative scenario in which the \$100,000 is not impacted by diminishing returns. Under this assumption, spending money on elections would seem to have a small influence on most elections. Using his ratio of \$100,000 for .33 percent of the vote, only in cases where there are massive spending deficits would there be a significant shift in the vote (these scenarios are discussed below). These numbers are significant for President Obama’s 2012 election, in which he spent roughly \$274.8 million more dollars than Mitt Romney (FEC, Interactive national map). This is roughly a \$166 million gap in 1990 dollars. Using Levitt’s rule again, I calculated that President Obama earned an extra five percent of the vote.

Third, an important question raised is if money spent in election can influence policy making process? At least in some ways, the answer to this question is yes, although lobbying behavior does not necessarily reflect this reality. When analyzing universities tendency to lobby politicians for earmarks, John M. de Figueiredo noted

We then use these elasticities to calculate the marginal benefit of lobbying for an average lobbying university. On the basis of the point estimates and results in this paper, the marginal return attributable to \$1.00 of lobbying is \$1.56 without representation on the House Appropriations Committee

Campaign Finance

(HAC) or Senate Appropriation Committee (SAC). When there is representation on HAC, the marginal return attributable to \$1.00 of lobbying is \$4.52; with representation on the SAC, the marginal return attributable to \$1.00 of lobbying is \$5.24 (De Figueiredo and Silverman, 2006, p. 598).

Essentially, universities that would get a greater return on their lobbying dollars lobby less. The concept of a “return on lobbying” (Blumenthal, 2009) would, however, appear to be clear evidence that money does have a hand in influencing politicians’ votes on the legislative floor. John M. de Figueiredo (2006) underscores this

We also find that, after controlling for lobbying, HAC and SAC members send a disproportionate share of academic earmarks to their constituent universities. Contrary to those who claim there is no relationship between federal spending and committee membership (Mayer 1991; Ray 1980), our study provides evidence that committee members direct federal spending toward their districts (p. 600).

There does seem to be an obvious impact of spending money on politicians. The previous conversation regarding the rise of corporate power, compounded with the impact of money in the political process, shows the extent to which corporations can influence American politicians. This entire process then receives legal protections under the guise of being an expression of free speech.

Fourth, Stephen Ansolabehere, John M. de Figueiredo and James M. Snyder Jr. (2003) state that

Legislators are often posited to hold key ‘gatekeeping’ positions and can threaten regulation or harassing oversight unless interest groups contribute (p. 109). Legislators who are committee chairs or who serve on powerful committees raise substantially more than other members, and legislators who are party leaders raise significantly more than backbenchers. Also, economic PACs give donations in ways that fit with a simple arbitrage pricing model: economic PAC contributions are pegged to the odds that a politician will win a seat, while donations from individuals and ideological PACs are not (p. 110).

A Podcast on NPR titled “I’m Calling to Ask for Your Contribution” also addresses how money is moved to important political committees. According to this Podcast, members of the Ways and Means Committee generally receive around an extra \$259,000 in campaign contributions (Planet Money: NPR, 2012, I’m Calling to Ask 1:30). This is because

...The Ways and Means Committee has jurisdiction over the entire tax code of the United States. And so when you’re on that committee, you have an incredible amount of power over how much taxes corporations pay, individuals, everybody, and so therefore all those corporations and the

moneyed special interests, care about your candidacy. They care about what you do on that committee and therefore they shove a lot of money in your direction totaling, you know, an average of around \$259,000 (Planet Money: NPR, 2012, I'm Calling to Ask 1:30-2:00).

NPR enlisted a PhD from the Sunlight Foundation, a non-profit organization that tracks money in politics, to see what committees were the most and least profitable for politicians (Planet Money: NPR, 2012, I'm Calling to Ask, 2:15). According to NPR, "It turns out, there are certain committees that actually hurt your fundraising..." (Planet Money: NPR, 2012, I'm Calling to Ask, 2:50). This data, for example, revealed that the

...judiciary costs you almost \$200,000 in your fundraising. And that is because you have jurisdiction over the court system, judicial nominations, there's just not a lot of moneyed interest that care about what goes on in judiciary, at least compared to Ways and Means or Financial Services. So an interesting thing about this, this isn't just something that people talk about. The leadership of both parties actually rank their own committees as either A committees, B committees, or C committees, according to how much power people have on those committees, and therefore how much they can raise money and so if you get on an A committee, you're actually, as a lawmaker, expected to raise more money and give it over to your party (Planet Money: NPR, 2012, I'm Calling to Ask, 3:00-3:50).

This NPR segment discusses the possibility that raising revenue may be a way to gain favor with your political party. Gaining favor with your party may make your fellow Republicans, Democrats, etc. more willing to endorse and support you in primaries and general elections. Essentially, even if it can be proven that money does not directly help politicians win elections, it is still possible for money to corrupt the political process by giving rich politicians more power in the party.

Fifth, even if money does not buy politicians' votes or win elections, it does consume an incredible amount of politicians' time that could otherwise go towards performing their duties effectively. The NPR podcast titled "I'm Calling to Ask For Your Contribution" stated that

...Even though they're doing fundraising, it could be argued, more than they're eating breakfast, lunch, and dinner, I mean, that's something that was really stood out from the reporting that we did and that's going to be a part of this hour is just how, everyday and constant and relentless this fundraising is (Planet Money: NPR, 2012, I'm Calling to Ask, 4:30-4:45).

To build on this point of how much time politicians spend fundraising, Senator Dick Durbin said

I think most Americans would be shocked, not surprised but shocked, if they knew how much time a United States senator spends raising money, and how much time we spend talking about raising money, and thinking

Campaign Finance

about raising money, and planning to raise money, and, you know, going off on little retreats, and, and conjuring up new ideas on how to raise money (Planet Money: NPR, 2012, I'm Calling to Ask, 4:50-5:10).

In the same podcast, Congressman Peter DeFazio described a call center located near the capitol that is used for raising funds. When asked if the people he described at the call centers were members of congress, he said, "Yeah, no, these are lines of members of Congress..." (Planet Money: NPR, 2012, I'm Calling to Ask, 6:00-6:05). This, as the NPR reporter summed up "You know, essentially, every single congressperson has a second job, which is being a telemarketer", clearly shows resource waste in the Senate due to fundraising (Planet Money: NPR, 2012, I'm Calling to Ask, 6:15-6:20).

Finally, it is important to note that a large amount of fundraising money constitutes party dues. Representatives spend a colossal amount of time and resources to raise money for their political party. Gary C. Jacobson states

National party organizations, particularly the Republican, have assumed an increasingly important role in financing campaigns. Greater central control leads to a more efficient distribution of the party's collective campaign resources, which, among other things, promises to raise the overall level of electoral competition. It also leads to more coordinated campaigning, with greater emphasis on national themes and programs (Jacobson, 1985).

Jeff Zeleny, in his essay "Of Party Dues and Deadbeats on Capitol Hill" in the New York Times goes on to elaborate on this point by saying

Whether or not they are in competitive races, lawmakers are asked to mount vigorous fund-raising drives to fill their own campaign chests. Then they dole to the party, which spreads the money to the most competitive campaigns in the country (Zeleny, 2006).

If the party relies on certain politicians' incredible fundraising abilities, it may give that politician greater access to more influential positions, election assets, and campaign endorsements. The following quote from a politico article explains this connection

There is no set deadline for members to pay up, though they have to pay within each election cycle. But, with the fall campaign drawing closer, party strategists say they'd like the money to come in sooner rather than later. For those who don't shell out by the end of the cycle, there could be consequences. They could lose the ability to use NRCC facilities, such as fundraising call centers (Isenstadt, Sherman, 2014).

Opensecrets.org, using data from The Center for Responsive Politics, supports this claim even further

While there is no official system of dues collection, it's widely understood that members of Congress who want support from the party apparatus come election season must kick in money themselves, and any member hoping to attain a leadership position or prime committee slot must kick in much more. The fees reportedly escalate from tens of thousands of dollars for junior members to hundreds of thousands for senior members who want top committee posts (Choma, 2014).

This suggests that candidates need resources to win elections and money plays an important role in elections. David Greene in the NPR podcast "Senator By Day, Telemarketer By Night" claimed "On average, the race to win a seat in the House of Representatives costs between one and \$2 million. For the average Senate race it's millions more" (Planet Money: NPR, 2012, Senator By Day). Planet Money's Alex Blumberg reports that, "According to the Center for Responsive Politics, a non-partisan group that tracks money in politics, nine out of 10 races, the candidate with the most money wins. That's in the House. In the Senate, it's eight out of 10." (Planet Money: NPR, 2012, Senator By Day). Steve Driehaus, a one-term congressman from Ohio, said that, "...you know they expect you to be raising money. That will be a determining factor as to whether or not they feel it's a good use of their resources to support your reelection efforts." (Planet Money: NPR, 2012, Senator By Day).

Conclusion

Throughout American history, a general shift in societal values favoring the interests of wealthy private firms has developed. The evidence for this shifting legal culture can be found in multiple different sources, although most importantly in the Supreme Court decisions on campaign finance. The result has been an increase in the power of private entities to influence the American political process under the guise of freedom of speech. Ironically, this increased freedom of speech for some has come at the expense of others, who now have less say in the democratic process.

By allowing wealthy Americans to donate incredible sums of money to politicians, America's legal culture has created an environment in which politicians are more likely to be receptive of the interests of the wealthy, and specifically of likely donors. This increased attention towards certain groups of Americans comes at the expense of others, as politicians desperate to secure their re-election are unlikely to act in the interest of poor Americans, as this will be unlikely to provide a good return on their political investment. There are several solutions that can be adopted to curtail the corrupting influence of money in politics. Federally financed elections, for example, would eliminate the need for politicians to scramble to raise money, or be controlled by the wealthy electorate. Stricter regulations through federally financed elections will allow politicians to be autonomous from lobbyists and focus on the policy making process. While federally financed elections are a good solution to the problem, they are not the only option available to those seeking to slow the influence of money in the American political system. Contribution limits serve a similar function to federally financed elections by putting wealthy and poorer donors on a more even

Campaign Finance

playing field, as a small group of rich donors will become as important to a politician as a similarly sized poor group. Whichever solution is taken, it is important for America's political system to be separated from the corporate sphere to ensure that the interests of the public are best represented in our political machinery.

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26 U.S.C. Sec.9036 and 9037(b)

2 U.S.C. §9031 et seq