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Inquiry into Campaign Finance Reform

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Campaign Finance in the United States

Liberty as the primary value

- liberty placed above other values, such as equality or fairness, in campaign finance and other policy areas
- freedom *from* rather than freedom *to* (freedom from government intrusion)
- policy focus on deregulation

Politics and elections in the US

- all candidates independently elected from single member districts in winner take all elections
- voting not compulsory – electoral activity focused on voter turnout
- most money raised and spent by candidates
- candidates do not need parties to win - primaries
- parties play minor financial role except in the few very competitive races
- often low party cohesion/loyalty in Congress
- Supreme Court justices serve for life; current ideological makeup of Court leans conservative

Brief history of US campaign finance policy

First campaign finance restrictions in various states as early as **1860s**

Early national-level campaign finance policy: 1907-1947

- ban on corporate and union contributions and expenditures clearly established
- quarterly disclosure of contributions over $100
- spending limits for parties and candidates
- but no real enforcement, easily evaded

1971 & 1974: the Federal Election Campaign Act (FECA)

- banned donations from corporations, unions, banks, government contractors, and foreign nationals
- prohibited cash contributions over $100 and contributions in the name of another
- quarterly candidate disclosure of contributions and expenditures
- voluntary public funding for presidential elections with spending limits
- limited contributions ***to*** candidates from self, individuals, parties, and political action committees (PACs)
- limited spending ***by*** candidates
- limited independent spending by individuals and groups
- created Federal Election Commission

1976: *Buckley v. Valeo* – free speech and campaign finance (challenge to FECA)

- limits on **contributions** to candidates necessary to prevent corruption or even the *appearance of* corruption
- limits on candidate and individual independent **expenditures** violate the First Amendment right of **freedom of speech**
- independent spending by individuals is **protected free speech** that does not pose enough risk of corruption to justify government limitation (case did not deal with corporations)
- decision criticized for equating money with speech

2002: Bipartisan Campaign Reform Act (BCRA)

- banned unlimited contributions to parties (soft money)
- prohibited "**electioneering communications**" just prior to election
- upheld by Supreme Court to prevent corruption or appearance of corruption (*McConnell v. Federal Election Commission* 2003)

2007: *Federal Election Commission v. Wisconsin Right to Life, Inc.*

- ban on electioneering communications creates a "**chilling effect on protected speech**"
- if ad could be interpreted as something other than express advocacy, cannot be prohibited
- weakened ban on corporate and union election spending

2010: *Citizens United v. Federal Election Commission* – expenditures

- "Government may not suppress speech on the basis of the speaker's corporate identity."
- "Independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."
- "No sufficient government interest justifies limits on the political speech of nonprofit or for-profit corporations."
- created **corporate entitlement to free speech protections**
- **overturned 102 years of prohibitions on corporate electoral spending** and parts of BCRA

2010: *SpeechNow.org v. Federal Election* court ***Commission* – contributions**
(federal appeals court – DC Circuit)

- limits on individual **contributions** to independent expenditure groups are unconstitutional
- "the government has no anti-corruption interest in limiting contributions to an independent expenditure group"
- since expenditures do not corrupt (after *Citizens United*), neither do contributions to groups that make expenditures
- now corporate fund raising *and* spending unrestricted

The Current System

The resulting regulatory regime limits fund raising and spending activities of candidates and parties, the only players on the ballot that can be held accountable on election day, making it more difficult and time consuming for them to raise money. Yet, the system allows individuals, groups, corporations and unions to raise and spend money more easily and often without full disclosure (see table below).

Fundraising and Spending Regulations

Candidates			
contributions ***to*** candidates	limited	no corporate/union	disclosed
spending ***by*** candidates	unlimited		disclosed
candidate spending own money	unlimited		disclosed
Parties			
contributions ***to*** parties	limited	no corporate/union	disclosed
contributions ***by*** parties ***to*** candidates	limited		disclosed
independent expenditures ***by*** parties *	unlimited		disclosed
PACs			
contributions ***to*** PACs	limited	no corporate/union	disclosed
contributions ***by*** PACs ***to*** candidates	limited		disclosed
contributions ***by*** PACs ***to*** parties	limited		disclosed
independent expenditures ***by*** PACs *	unlimited		disclosed
Individuals			
contributions to candidates, parties, PACs	limited		disclosed
independent expenditures ***by*** individuals *	unlimited		disclosed
527 political organizations			
contributions ***to*** 527s	unlimited	corporate/union ok	disclosed
contributions to candidates, parties	prohibited		
independent expenditures ***by*** 527s *	unlimited		disclosed
501(c) nonprofit organizations			
contributions ***to*** 501(c) nonprofits	unlimited	corporate/union ok	not disclosed
contributions to candidates, parties	prohibited		
independent expenditures ***by*** 501(c)s *	unlimited		minimal disclosure
Corporations and labor unions – using treasury funds since *Citizens United* (2010)			
contributions to candidates, parties	prohibited		
independent expenditures ***by*** corps/unions	unlimited		disclosed

* *Independent expenditures* (including electioneering communications) cannot be coordinated with a candidate or party organization.

Consequences and Issues

Basic disclosure works pretty well

- low disclosure thresholds captures a lot of campaign finance activity
- captures multiple donations by same donor
- pre-election disclosure with quarterly reports makes information public *before* election
- extensive on-line data (generally available 48 hours after reported at www.fec.gov)
- informed media attention and increased reporting on campaign finance before and after elections

- development of watchdog groups (Campaign Legal Center, Campaign Finance Institute, Center for Responsive Politics)
- but disclosure rules have not kept pace with new fundraising and spending methods (e.g., 501(c) organizations)

Enforcement
- penalties deter overt illegal behavior
- but rules and regulations have not kept pace with new developments
- enforcement is improved, but FEC under-funded and lacks power

Presidential public funding no longer works
- candidates decline public funds because they can raise more on their own

Limits on contributions to candidates and parties
- may prevent quid pro quo corruption
- yet, since candidates/parties must raise money in limited amounts, they spend great amounts of time and energy doing so

Independent expenditure groups, corporations and unions can raise and spend with few limits
- but no accountability on election day
- in the few competitive races, independent spending often more than candidate spending

Freedom of speech and campaign finance
- Court has created entitlement to freedom of speech protections for corporations and unions, overturning 102 year prohibition on corporate spending in federal elections
- corruption or the appearance of corruption now seen as only possible when giving contributions to candidates and parties
- other campaign finance relationships now said to not give rise to corruption – disagreement on this point is partisan/ideological
- some in Congress trying to "fix" *Citizens United* case (e.g., disclaimers, more disclosure, shareholder disclosure, prohibit government contractors and foreign companies), but freedom of speech issue not addressed
- campaign finance deregulation highly organized effort by conservative groups
- more law suits in the pipeline