

## Campaign Finance

Campaign finance refers to the way that candidates fundraise and spend money in elections. It has long been a key part of determining who holds public office in the United States. In national elections with millions of eligible voters, presidential campaigns are approaching \$1 billion in spending per major party candidate. Numerous frequently changing laws attempt to regulate what a candidate can or cannot do in terms of campaign finance. The current state of campaign finance legislation for federal elections is stricter than it has ever been, and yet crafty candidates and their lawyers have learned how to circumvent these laws. “Buying” an election has become a source of controversy—critics consider it anti-egalitarian and undemocratic. Legally, a candidate can apply for public funding, ask for private donations, or use a personal source of money to fund their campaigns. The issue of unrestricted campaign finance practices exploded in the second half of the 20th century and remains a source of debate and controversial legislation. One side of the debate says that any campaign finance restrictions are anti-democratic because money is speech. The other side argues that unrestricted practices create a barrier to public office that only the extremely wealthy can cross (or, those who are indebted to the wealthy). Politicians from both sides of the political spectrum, such as former Arizona Senator Barry Goldwater and former Massachusetts Governor Michael Dukakis, have felt that it is a politician’s civic responsibility to finance campaigns responsibly and from broadly based grass-roots organizations. Despite the attempts at drafting and passing reform legislation, the situation has not changed much in a practical way: money is still the “mother’s milk” of politics.

### *Past Practices*

Corrupt campaign finance practices increased in the late 1800s, and by the turn of the century, reformers highlighted the need for regulation. The federal government had not developed rules determining how candidates could fund their campaigns. As a result, President Theodore Roosevelt (1901-1909) spoke about the need for campaign finance reform: it would prevent corporations from overly influencing a candidate’s campaign. The

president's declaration shed light on the problem and encouraged Congress to act. Congress responded by enacting the Tillman Act of 1907. Sponsored by Senator Benjamin Tillman of South Carolina, the Tillman Act represented the first piece of legislation banning corporate contributions to candidates for national political office. Although the bill included the penalties of fines or prison sentences for violators, it did not have an enforcement mechanism. To begin with, candidates running for office were not required to disclose the names of campaign donors. Also, the new law only applied to general elections, not party primaries. Employees of corporations could make personal donations to campaigns and be reimbursed later, which appeared to defeat the spirit (not letter) of the law. While the Tillman Act represents an important milestone as the first major attempt at campaign finance reform, the bill failed to change the corrupt practices it aimed to eliminate.

Looking to build on the foundation created by the passage of the Tillman Act, President William Howard Taft (1909-1913) encouraged Congress to adopt what became the Federal Corrupt Practices Act (FCPA) of 1910. This bill placed spending limits on elections in the House of Representatives, and it required political parties to file spending reports after each election cycle. The reports provided details about how much money each candidate raised and spent. Initially the law suffered from similar enforcement issues as the Tillman Act. In 1911 Congress amended the FCPA to include campaigns for Senate and primary elections within federal jurisdiction. The amendments were also the first in United States law to impose spending limits on campaigns and require candidates to disclose their campaign finances. Although Congress had succeeded in creating spending limits for the first time, the FCPA as amended in 1911 would only remain fully in place for 10 years. In 1921 the Supreme Court decided in *Newberry v. United States* that Congress did not have the authority to create spending limits as written in the 1911 amendments. Congress responded by amending the FCPA again in 1925. The 1925 amendments included several revisions, including the requirement that all candidates disclose all donations made to their campaigns larger than \$100. Donors could, however, make multiple donations of under \$100 to

avoid disclosure (another example of donors' ability to violate the spirit, if not letter, of the law). Even after three versions of the bill, the FCPA still failed to provide for tangible regulation and penalties.

The next major piece of legislation changing the landscape of campaign finance was the Taft-Hartley Act of 1947, although it was not the primary purpose of the bill. Sponsored by Senator Robert Taft and Representative Fred Hartley, the law was designed to limit the power of labor unions following the end of World War II. Congress overrode President Harry Truman's veto of the bill by a two-thirds majority vote in both Houses. The bill limited the ability of labor unions to go on strike and made it more difficult for them to be run by more radical members. In terms of campaign finance, the law prohibited union donations to any political campaigns for federal office. The Taft-Hartley Act marked the first time such donations were outlawed. Prior to this point, large unions had considerable ability to sway elections. Despite the Act, campaign finance regulation continue to lack a regulatory agency and the corrupt practices that Theodore Roosevelt had spoken out against 40 years earlier continued.

The next major efforts to limit unrestricted campaign finance practices resulted in the Federal Election Campaign Act (FECA) of 1971. The law created, for the first time, public funding of federal elections: income taxes could be used for funding presidential campaigns and national nominating conventions. Each major party received \$2 million, to be adjusted for inflation in future campaigns. In 2012, the Democratic and Republican convention committees received approximately \$18 million each. Minor parties can receive partial funding for their conventions if their presidential candidate received more than 5% of the popular vote in the preceding election (for example, Ross Perot received 18.9% of the popular vote in 1992).

In 1972, five men were arrested for breaking into the Democratic National Committee's headquarters in the Watergate office complex. Not only did the Nixon administration attempt to cover it up, but a subsequent investigation found a number of other illegal activities associated with

campaign financing. As a direct result, Congress amended the FECA in 1974.<sup>1</sup> The amendments limited campaign contributions made by individuals, political action committees (PACs), and political parties and also created a regulatory agency called the Federal Election Commission (FEC). The FEC was finally a functional enforcement mechanism for the provisions of the law and has overseen all presidential elections since 1976. Soon after the passing of the bill, the Supreme Court case *Buckley v. Valeo* found that laws against candidates using unlimited amounts of their own money were unconstitutional and that unlimited spending on influencing the outcome of elections is protected under the First Amendment's free speech clause. Additionally, the court ruled that the method of selection for members of the FEC was a violation of the separation of powers. The legislation reform of the 1970s set the groundwork for the current landscape of federal campaign finance.

### *Current Practices*

The changes to the Federal Election Campaign Act by *Buckley v. Valeo* allowed politicians to opt out of using public funding for their campaigns and instead draw on their personal money. Steve Forbes did this in the 2000 Republican primary, choosing to fund his campaign with his own personal fortune and prompting then-Governor George W. Bush to follow suit and also opt out of public funding. President Bush did this again in his 2004 reelection bid and raised over three and a half times the spending limit from public funding.<sup>2,3</sup> Since then most presidential candidates opt not to receive public funding because the time and spending restrictions are incompatible with how early and expensive modern campaigns have become.<sup>4</sup>

In 2002, the FECA was heavily amended by the Bipartisan Campaign Reform Act (BCRA)—a perennially rejected bill since 1995. Commonly

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<sup>1</sup> Corrado, Anthony. "The Changing Environment of Presidential Campaign Finance." In *In Pursuit of the White House: How We Choose Our Presidential Nominees*. Ed. William G. Mayer. Chatham, New Jersey: Chatham House Publishers, Inc., 1996. 220–253. 222.

<sup>2</sup> Federal Election Commission. "Presidential Spending Limits 2004." <[www.fec.gov/pages/brochures/pubfund\\_limits\\_2004.shtml](http://www.fec.gov/pages/brochures/pubfund_limits_2004.shtml)> Last accessed 11 July 2012.

<sup>3</sup> Ibid. "Presidential Campaign Receipts." <[www.fec.gov/press/press2005/20050203pressum/presbigpic.pdf](http://www.fec.gov/press/press2005/20050203pressum/presbigpic.pdf)>. Last accessed 11 July 2012.

<sup>4</sup> Corrado, 225.

referred to as the McCain-Feingold Bill due to its sponsorship by Senators John McCain and Russ Feingold, the bill prevented national political parties from raising or spending money not subject to federal regulation for any reason. It also banned corporations from paying for campaign ads that aired within 30 days of a primary and within 60 days of a general election. Right after the bill passed, its constitutionality was challenged to the Supreme Court by a group led by Senator Mitch McConnell. In *McConnell v. FEC* (2003), the Supreme Court upheld most of the legislation as passed by Congress. In a subsequent challenge to the law, the Supreme Court's decision in *Federal Election Commission v. Wisconsin Right to Life* (2007) ruled that the section of the BCRA banning corporations from purchasing campaign ads just prior to an election was unconstitutional in any cases where the ads could reasonably be seen as having a goal other than encouraging citizens to vote for or against a political candidate. It also required official campaigns as well as other political organizations to publicly state, or "stand by," their advertisements. In 2008, a provision of the law known as the "millionaire's amendment" was struck down by the Supreme Court in the case of *Davis v. Federal Election Commission* (2008). The overturned provision had allowed for higher contribution limits for any candidates being outspent by an opponent who was utilizing personal wealth.

The latest challenge to the BCRA was heard by the Supreme Court in *Citizens United v. Federal Election Commission* (2010). The basis of the challenge was whether a political documentary created by an organization called Citizens United about Hillary Clinton during the 2008 presidential campaign should be classified as a political ad under the law. The Supreme Court's ruling struck down the provision of McCain-Feingold banning corporations from purchasing ads 30 days before a primary and 60 days before a general election but did not change the established limits for how much money corporations can give to political campaigns. The ruling was also notable for applying First Amendment rights to corporations and disagreeing with the belief implicit in the provisions of McCain-Feingold that American voters require protection from media manipulation. President

Obama questioned the decision during his State of the Union address in 2010 with the Supreme Court justices in attendance.

In response to the Taft-Hartley Act of 1947 limitations on union activities in political campaigns, union leaders created the first political action committees (PACs) to allow union members to continue their financial contributions. Today, PACs play a crucial role in the world of campaign finance by fundraising in support of or opposition of specific candidates for office. For federal elections, any organization that spends more than \$1,000 to influence the outcome is classified as a PAC. Individuals can donate up to \$5,000 to federal PACs which can be run as corporate-affiliated, union-affiliated, or independent PACs. PACs set up to support more than one candidate running for a federal office can give \$5,000 per candidate per election, with primary and general elections classified as separate elections. These PACs can also give \$15,000 per year to a political party, \$5,000 per year to other PACs, and can spend as much money as they see fit on expenditures not related to specific candidates or parties.<sup>5</sup> As a result of these rules, many PACs are able to circumvent donation limits by giving to companion PACs or finding ways to classify expenditures as independent of specific candidates.

PACs have several classifications including connected PACs that only collect money from members of a certain corporation or trade union and non-connected PACs that can collect money from anyone. A relatively recent category now making an impact is the super PAC, which cannot donate to or work in direct coordination with campaigns or parties but can raise unlimited funds from individuals, corporations, and unions.

Additionally, the super PAC may not directly support any candidates for office. While the goal of both restrictions is to prevent candidates from using super PAC money to help get them elected, the ease with which current candidates flaunt this intent led the television satirist Stephen Colbert to create a super PAC run by fellow satirist Jon Stewart when

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<sup>5</sup> Federal Election Commission. "The FEC and the Federal Campaign Finance Law."  
<[www.fec.gov/pages/brochures/fecfecsa.shtml](http://www.fec.gov/pages/brochures/fecfecsa.shtml)>. Feb 2011. Last accessed 11 July 2012.

Colbert launched a presidential bid. A final type of PAC is the leadership PAC, which can be set up by elected officials or political parties to make independent expenditures. Leadership PACs allow elected officials to take advantage of their renown to raise money for fellow party members. They have been used for questionable purposes by several officials in recent years, including former Speaker of the House Nancy Pelosi.

Beyond the several types of PACs, 501(c)(4) organizations are being used in campaign finance. 501(c)(4) refers to the IRS tax code designation for groups who either operate for social welfare, or whose membership is limited to members of a certain corporation and whose earnings are devoted to recreational, charitable, or educational purposes. 501(c)(4) organizations can be involved in elections as long as their primary goal remains the promotion of social welfare. Donations made are not tax deductible, but the organizations are not required to publicly disclose a list of donors. As a result, 501 (c) (4) organizations are now routinely used in lobbying efforts, resulting in controversy.

The issue of PACs and the effectiveness of the FEC act as signifiers of the current state of politics in general in the United States. Democrats and Republicans now refuse to work together to the point where the only way either party can accomplish anything is to be in the majority. As a result getting members of your party elected to as many federal offices as possible has taken on an even larger role than in the past. This has led to both parties circumventing the rules when possible to raise as much money as possible. The *Citizens United* decision has also shown a divide among the American public about the role of corporations in 21st century America. While some have supported the ruling as a crucial protection of First Amendment rights, others have criticized it as a ruling in favor of the rights of big business over the rights of the common man. The outcry over the verdict has also led to renewed efforts at reform through other means. Both members of Congress and regular citizens have shown a desire to pass a constitutional amendment declaring that corporations are not people and do not have the same rights as a result. Some citizens have also begun to question the Supreme Court and its role within the balance of

power. In many people's eyes, the modern court simply has too much power. Although little has come of any of the reform efforts related to the verdict, its ability to energize people on both sides of the decision could signal a renewed interest in politics for many Americans.

Given the controversy surrounding different types of organizations currently involved in campaign finance, the Federal Election Commission (FEC) plays a large role in current practices. The FEC is an independent regulatory agency that has overseen the enforcement of campaign finance regulations since 1975. It is composed of six members who are appointed by the president and confirmed by the Senate. FEC members serve staggered six-year terms so that two seats are appointed every two years. A maximum of three members can belong to the same political party, and a majority vote is required for any action to be taken. One member acts as chairperson each year, with no one serving as chair more than once during their term of office. The FEC's jurisdiction is limited to the administration of campaign finance laws related to federal elections, and its role therefore includes enforcing expenditure limits, auditing campaigns, and administering the presidential campaign fund for public funding of presidential candidates. The FEC publishes comprehensive lists of money raised and money spent for all presidential and congressional campaigns that includes basic information for everyone who donates more than \$200 to a campaign. Critics of the FEC argue that its six-member structure allows for bureaucratic deadlock and that penalties for violations are usually issued long after the campaign in question has ended.

In addition to private funding raised by campaigns, the federal government also provides public financing for presidential elections through subsidies in the forms of matching the first \$250 of individual donations received during the primary period, paying for the national conventions, and providing funding for both major parties' presidential candidates in the general election. To get the subsidies, candidates must first raise a minimum of \$5,000 in 20 different states.<sup>6</sup> At this point, a candidate must either accept

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<sup>6</sup> Corrado, 224.



the public funding in exchange for a limit on how much they can privately raise or choose not to accept public funding in exchange for being able to raise an unlimited amount of money. The majority of candidates accepted public funding through the end of the 20th century, but the trend has changed toward favoring private funds.

According to the current practices of the federal contribution limits, individuals may give \$2,500 per candidate, \$30,800 to a national party committee, \$10,000 to a state/local/district party committee, and \$5,000 to any other party committee. A National Party committee can give \$5,000 per candidate, an unlimited amount to a state/local/district party committee, and \$5,000 to any other party committee. A state/local/district party can give \$5,000 per candidate, an unlimited amount to a national party committee, and \$5,000 to any other party committee. A multicandidate PAC can give \$5,000 per candidate, \$15,000 to a national party committee, \$5,000 to a state/local/district party committee, and \$5,000 to any other party committee. A non-multicandidate PAC can give \$2,500 per candidate, \$30,800 to a national party committee, \$10,000 to a state/local/district party committee, and \$5,000 to any other party committee. An authorized campaign committee can give \$2,000 per candidate, an unlimited amount to national party and state/local/district party committees, and \$5,000 to any other party committee.<sup>7</sup> Although disclosure rules require these groups to file regular reports detailing expenditures, the current contribution limits allow groups to exchange money to get around them.

Another way to get around campaign finance regulations is the practice of bundling. Bundling occurs when one person gathers donations from many members of a corporation or other group and presents it to a campaign as a lump sum, thereby avoiding the limitation on personal contributions from one person. The practice of bundling has increased significantly over the last 10 years and will play a large role in the general election for both Barack Obama and Mitt Romney. The final group that plays an important role in current campaign finance is the lobbyists, who can organize

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<sup>7</sup> Federal Election Commission. "The FEC and the Federal Campaign Finance Law."  
<[www.fec.gov/pages/brochures/fecfecsa.shtml](http://www.fec.gov/pages/brochures/fecfecsa.shtml)>. Feb 2011. Last accessed 11 July 2012.

fundraisers and create PACs to help members of Congress get elected. Doing so gives lobbyists an inside track once the member is elected, thereby increasing the likelihood that the congressperson will support the interests of those individuals who the lobbyist represents. The debate continues whether the uncontrollable spending practices are hindering democracy or are exactly the shape democracy takes in a modern capitalist nation.

### *Technology*

The rampant use of big money in democratic elections is not a particularly modern phenomenon, but using the Internet is. The Internet is the most important adaption of media technology into electoral politics since the televised campaigns of the 1950s and 1960s. The hundreds of millions of Internet users in the United States make it imperative that every campaign has a comprehensive strategy for using the Internet. A Web site and Internet use can accomplish numerous important tasks in a campaign, including recruiting delegates, raising money, projecting a distinct appeal, monitoring public opinion, allowing a certain level of feedback, and motivating the base. In the past in order to raise money, it was necessary to have a large number of workers in each state to make telephone calls, hold dinners, and go door to door through neighborhoods asking for donations. The advantages of using the Internet are its low cost, access to archives, and the ability to reach a wider audience.

With e-mail outreach and Web site promotion, the marginal cost of raising money can fall to zero. By utilizing the Internet, campaigns over the last few presidential cycles have been able to shatter previous fundraising records while devoting fewer campaign resources specifically to fundraising efforts. Conversely, candidates can now expect to need to raise more money than in the past due to the equal ease with which opponents can raise money by using the Internet.

The Internet has even given rise to a digitally based cousin of the super PAC. Named after section 527 of the Internal Revenue Code, 527 organizations are tax-exempt organizations that work to influence elections,

nominations, and appointments to various levels of public office. These organizations are able to raise multimillions of dollars per year and are not subject to FEC regulations.

Despite its many benefits, the use of the Internet requires a new system of expectations and decorum. Candidates need to be prepared to capitalize on it at the right moment as an important and effective tool. Politicians must now also realize that e-mails are no longer informal, private documents. It is perfectly reasonable to expect that any e-mail could end up on the front page of the *New York Times* during a campaign.