

CLOSE UP IN CLASS: MONTHLY POLICY DISCUSSION

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CAMPAIGN FINANCE REFORM

CENTRAL QUESTION

Should the federal government reform its campaign finance laws?

INTRODUCTION

Each time Americans go to the polls for federal elections—voting for members of the House of Representatives every two years, for the president every four years, and for senators every six years—they revive the nationwide debate over campaign finance. Although this issue can seem vast and complex, the processes surrounding campaigns and elections are the heart of any democracy. In this *Close Up in Class Monthly Policy Discussion*, we examine the history of federal campaign finance law, outline reforms that have been proposed, and weigh the pros and cons of the paths forward.



BACKGROUND

Money has always played an integral role in the American political process, allowing candidates to build campaign organizations and advertise in newspapers, on radio and television, and now on the Internet. As a result, the question of who can make political contributions—and how much money one can spend—has long been a topic of fierce debate.

Over the course of the last century, Congress has attempted to deter corruption by passing laws to regulate both political contributions and expenditures:

- **1907:** Congress passes the Tillman Act to prohibit corporations from contributing directly to candidates for federal office—a ban that was extended to labor unions in 1943.¹
- **1947:** The Taft-Hartley Act prohibits corporations and unions from making contributions and expenditures in federal elections.² As a result, business and labor interests begin forming political action committees (PACs)—separate committees that are permitted to raise and spend money to assist candidates directly.³
- **1971–1976:** Congress establishes much of the modern campaign finance system through the Federal Election Campaign Act (FECA) of 1971.⁴ In the aftermath of the Watergate scandal, which revealed widespread illegal activity in the 1972 reelection campaign of President Richard Nixon, FECA is greatly strengthened to set limits on campaign contributions, institute new disclosure requirements for contributions, and establish the Federal Election Commission (FEC) to enforce the law.⁵ But in 1976, the Supreme Court cites the First Amendment when striking down FECA's attempts to place caps on (1) total campaign expenditures, (2) expenditures by self-funding candidates, and (3) independent political expenditures, or money spent on communications expressly

CAMPAIGN FINANCE REFORM: BACKGROUND

advocating the election or defeat of a candidate. The decision in *Buckley v. Valeo*, however, upholds FECA's restrictions on individual contributions to campaigns.⁶

- **2002:** Congress passes the Bipartisan Campaign Reform Act, also known as McCain-Feingold. The law bans political parties from raising or spending “soft money”—unlimited, unregulated contributions from individuals, corporations, and unions—to use for party-building activities and generic issue advertisements that do not explicitly support or oppose a candidate.⁷ The law also prohibits corporations and unions from directly financing electioneering communications—advertisements that refer to a specific candidate and air within 30 days of a primary or 60 days of a general election.⁸

In the aftermath of the enactment of McCain-Feingold, corporations and unions found much of their political activity limited to highly regulated PAC operations and issue advertisements. But the courts changed the federal campaign finance landscape again with three landmark decisions in 2010 and 2014.

- ***Citizens United v. FEC (2010)*:** Citizens United, a conservative group, made a 2008 film critical of Senator Hillary Clinton, D-N.Y., then a presidential candidate, and wanted to promote it during the primaries—an electioneering communication forbidden by McCain-Feingold. The Supreme Court concluded that the 1947 ban on corporate electoral spending was unconstitutional and struck down the McCain-Feingold ban on corporate and union electioneering communications, thereby allowing corporations and unions to spend freely in support or opposition of candidates. But the decision kept in place the ban on corporate and union donations made directly to candidates for federal office.⁹
- ***SpeechNow.org v. FEC (2010)*:** The impact of *Citizens United v. FEC* was broadened two months later when the District of Columbia Circuit Court of Appeals concluded that FECA's limitations on contributions to independent political organizations were a violation of the First Amendment.¹⁰
- ***McCutcheon v. FEC (2014)*:** After Shaun McCutcheon, an Alabama businessman, challenged a McCain-Feingold provision that placed an aggregate limit on how much money an individual may donate in a two-year election cycle, the Supreme Court struck down the limit as a violation of the First Amendment.¹¹

As of 2015, federal restrictions remained in place on contributions to candidates, PACs, and political parties, but the courts have lifted many of the limits on contributions to independent political organizations. And these efforts to protect the First Amendment have had significant effects on the electoral landscape.



How much can individuals contribute to federal candidates, PACs, and parties?



What types of federal contributions are prohibited?



What are independent expenditures?

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THE CURRENT CONTROVERSY

Should the federal government reform its campaign finance laws?

One of the most profound consequences of *Citizens United v. FEC* and *SpeechNow.org v. FEC* was the formation of independent expenditure-only committees, more commonly known as super PACs. Super PACs may raise unlimited funds from individuals, corporations, and unions, and spend unlimited funds to independently advocate for or against candidates. Unlike traditional PACs, super PACs may not donate directly to candidates—but they are able to spend enormous sums of money on their behalf.¹²



What is the role of super PACs?

During the 2012 election cycle, the Center for Responsive Politics concluded that super PACs raised more than \$828 million and spent roughly \$609 million.¹³ At the same time, individual campaigns raised and spent record amounts of money. President Barack Obama won reelection in 2012 after raising a total of \$1.123 billion; his opponent, former Governor Mitt Romney, R-Mass., raised \$1.019 billion.¹⁴

These high levels of spending by campaigns and outside groups have inspired some members of Congress to propose reforms to the campaign finance system. In 2014, Representative John Sarbanes, D-Md., introduced the Government by the People Act, which would give congressional candidates six-to-one federal matching funds for all contributions up to \$150 if they forego large donors; award small donors a \$25 tax credit; and allow candidates to earn additional matching funds to use in the 60 days prior to an election.¹⁵ In June 2015, Senator Richard Durbin, D-Ill., also introduced the Fair Elections Now Act, which would allow qualified Senate candidates to earn grants, matching federal funds, and television advertising vouchers if they agree to limit their fundraising to \$150 per donor.¹⁶

Supporters of these reforms argue that they are necessary to counteract a surge in electoral spending by wealthy individuals and special interest groups that is drowning out the voices of the middle class. But opponents insist that limiting political contributions only curtails political speech and debate by passionate individuals and organizations, thus threatening a cornerstone of American democracy.

Should the federal government reform its campaign finance laws?

YES: It is time to get big money out of politics and listen to the middle class.

“We have to end the flood of secret, unaccountable money that is distorting our elections, corrupting our political system, and drowning out the voices of too many everyday Americans,” said former Senator Clinton, a 2016 presidential candidate. “Our democracy should be about expanding the franchise, not charging an entrance fee. It starts with overturning the Supreme Court’s *Citizens United* decision, and continues with structural reform to our campaign finance system so there’s real sunshine and increased participation.”¹⁷

Ever since the Supreme Court issued its decision in *Citizens United v. FEC*, a flood of special interest money—from wealthy individuals, corporations, and unions—has overwhelmed the American electoral system. “Since the *Citizens United* decision, we have seen how the tidal wave of unlimited, unidentified money has distorted our politics and our process,” said House Minority Leader Nancy Pelosi, D-Calif. “The American people deserve a government of the many, not a government of the money.”¹⁸

The Supreme Court portrayed independent political expenditures as a form of free speech protected by the First Amendment, but according to that reasoning, poor Americans have less of a right to free speech than wealthy Americans. During the 2012 presidential race, billionaire businessman Sheldon Adelson donated nearly \$91.8 million to conservative super PACs that supported his favored candidates; in the 2014 midterm elections, billionaire hedge fund manager Thomas Steyer gave more than \$73.7 million to liberal super PACs.¹⁹ Unlimited donations such as these make the voices of wealthy Americans louder than the voices of everyday Americans.

If, however, Congress adopts a small donor system by passing the Government by the People Act or the Fair Elections Now Act, it would reduce the unfair influence of wealth in elections, expand the pool of candidates able to seek office, allow candidates to spend more time listening to constituents instead of attending high-dollar fundraisers, and ensure that policymakers are not indebted to special interests.

“It would reward candidates who build strong ties to their communities and work actively to engage the citizenry,” Representative Sarbanes said of his bill. “A small-donor matching system would also reinvigorate our democracy by empowering a more diverse pool of candidates who would have the resources to run, compete, and win. Just imagine your representative in Washington standing in your living room, listening to your priorities and making policy decisions that benefit you—all because your voice matters. That’s the promise of a small-donor matching system.”²⁰

NO: Limiting political contributions only censors political speech.

“When government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.”²¹

Writing for the majority in *Citizens United v. FEC*, Justice Anthony Kennedy took a powerful stand on behalf of free speech. The American people—no matter if they are wealthy or poor—have the right to participate in the political process by freely donating their money to any independent political group they wish to support.

“Probably the most misunderstood case in modern legal history, *Citizens United* simply doesn’t stand for what many people say it does,” said Ilya Shapiro, a senior fellow at the Cato Institute. “People don’t lose rights when they get together, be it in unions, advocacy groups, private clubs, for-profit enterprises or any other way. By removing limits on independent political speech—spending by people unconnected to candidates and parties—*Citizens United* weakened the government’s control of who can speak, how much, and on what subject. That’s a good thing.”²²

The recent surge in political spending has hardly been a corrupting influence in American politics—instead, it has been a healthy expression of a passionate and engaged electorate. And while super PACs have played a sizable role in the past three election cycles, these groups represent a diverse collection of wealthy and everyday Americans alike. In 2014, for example, the leading group donors to super PACs included the National Education Association, which donated more than \$26 million to liberal groups; the Carpenters & Joiners Union, which gave nearly \$9.7 million to liberal groups; the National Association of Realtors, which gave more than \$10 million to conservative groups; and the American Federation of State, County, and Municipal Employees, which gave \$7.8 million to liberal groups.²³

If Congress decides to commit scarce government funds to enacting a small donor system, it would do little more than stifle political speech. “I believe in free speech and the First Amendment, which means everyone ... has a right to speak out in politics as effectively as possible,” said Senator Ted Cruz, R-Texas. “To speak out and make your views known, whether that is standing on a street corner on a soap box, whether that is printing out a yard sign, whether that is spending money to run a radio ad or a TV ad, effectively communicating.”²⁴

CAMPAIGN FINANCE REFORM: QUESTIONS TO CONSIDER

Do you believe that political contributions are a form of political speech? Why or why not?

What limits, if any, do you believe the government should place on political contributions to candidates, parties, and independent political groups?

Would you support a campaign system that relied entirely on public funds and eliminated private campaign donations? What could such a system look like? What would be its benefits and drawbacks?

CAMPAIGN FINANCE REFORM: ENDNOTES

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