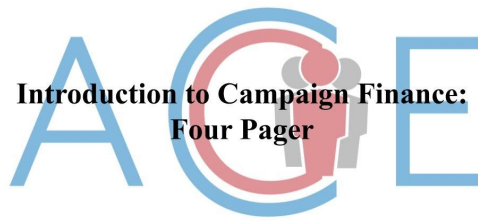


Introduction to Campaign Finance: Four Pager



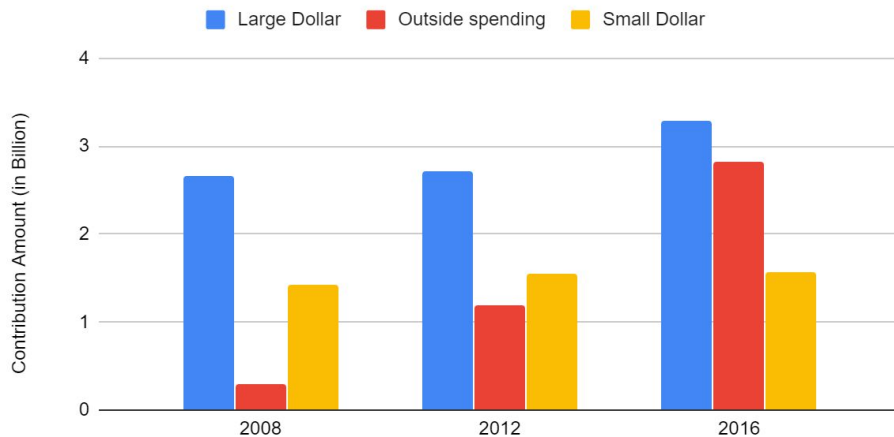
Campaign finance is the system by which money is raised and spent to advocate for a candidate or policies during an election. The US campaign finance system is defined by three issues: freedom of speech vs. equality, disclosure, and enforcement. It is a uniquely challenging policy issue because every policymaker was elected and funded through the current system. Campaigns are expensive and increase in cost every year, forcing elected officials to rely more and more on those who can afford to donate large sums every election cycle, and making it less likely officials will pass legislation limiting the power of that same group. The average spent for a successful 2016 campaign was: \$957.6—Presidency, \$19.4—Senate, and \$1.6 million—House. That year 85.3% of Senate races and 95.4% of House races were won by the candidate which spent the most.

Balancing Freedom of Speech vs. Equality is one of the main debates in campaign finance policy. This tension exists because every step towards creating an election system with equal opportunity necessarily limits the speech of some and elevates others to bring everyone onto the same page. For example, if individuals are allowed to contribute a maximum of one thousand dollars to a political campaign, this preserves some amount of equality for a candidate and their supporters, many of whom cannot afford to contribute that amount. But it also limits the freedom of speech of those who can afford to give more than a thousand dollars and want to spend their money supporting a candidate who represents their beliefs. The US system leans towards free speech, and has fewer regulations than most liberal democracies. The only two elements which push the US towards the equality side of the spectrum are (1) an **individual contribution limit**, which is a cap on the amount individuals can donate to a federal campaign (\$2,800 per election cycle) and (2) a **public financing system** where presidential candidates can receive a grant instead of accepting contributions. However, elections have become too expensive for public financing to be viable. The 2016 winning presidential campaign cost \$957.6 million and the public financing option would have provided \$96.1 million.

In the landmark decision **Citizens United** (2010), the Supreme Court decided individuals and corporations could spend as much as they want to support a candidate as long as that spending was independent of the campaign (**outside spending**). This case (and decisions based on the ruling) lead to the creation of **Super PACs**; groups which can raise and spend unlimited funds during an election. The rationale behind this decision was that outside spending has minimal value to a campaign, so unlimited outside spending does not risk corrupting the political system. This decision was based on a Supreme Court case from the 1970s, *Buckley v. Valeo*, where the

Supreme Court decided that outside spending is worth 6% of campaign spending. Regular PACs work with campaigns to raise and spend, so they have the same contribution limits as campaigns. Following the Citizens United decision, outside spending increased by 841% over 8 years to \$2.8 billion in 2016, as seen in the chart below¹. Super PACs are a major conduit for outside spending, but they frequently coordinate with campaigns through back channels which undermines the concept of “outside” spending. The FEC, who is responsible for investigating collusion between outside spending and campaigns, has only conducted three investigations since 1999.

Types of Spending in US Elections



Reformers who want to move closer to equality suggest limiting or banning outside spending or improving the public financing system so that it is a viable option for presidential candidates, as well as expanding it to Congressional elections. In order to limit or ban outside spending, it is likely that a constitutional amendment would be required because of the Supreme Court’s position. Stricter policing of Super PACs colluding with Other reforms which have been implemented in other democracies include limiting the time frame of a campaign (the average US presidential campaign takes 1.5 years, French presidential campaigns take 1 month) to reduce the necessary costs, allocating tv and radio advertising time for free to all candidates who reach predetermined thresholds, and implementing a ceiling on overall campaign spending.

Although the system already leans heavily towards freedom of speech, reformers interested in pushing the system further in towards freedom of speech advocate for eliminating the individual contribution limit for campaigns and removing the public financing system.

Disclosure is the policy where sources of campaign or political advocacy (like advertisements) funding are available to the public. All funding from political committees, PACs, Super PACs, and individual contributions is supposed to be disclosed. A political committee is an organization which influences federal elections by spending, and who are either under the control of a

¹ Small dollar 2008 data based on estimates, information not available from the FEC

candidate or whose major purpose is the election (or nomination) of a candidate. The FEC requires reporting on the donor and amount donated, and makes that information available to the public. However, if funding comes to the PAC or SuperPAC from 501(c)(4) organization, the donors and amounts are not disclosed. Money where the donor is not disclosed is known as **dark money**. The only deciding factor between a 501(c)(4) organization and a political committee is what percentage of the organization's budget is spent on political advocacy. If it is below 50% it is a 501(c)(4) and can keep its donors undisclosed. Many donors use this loophole to obscure their involvement in elections. Because of the room for dark money, the US has limited disclosure.

Furthermore, the FEC definition of political advocacy is a major asset to 501(c)(4) organizations. Paying for the distribution of an advertisement counts as "political advocacy" but the cost of producing that advertisement does not. For example, if an individual starts a 501(c)(4) organization with a million dollars, spends half of that money producing a national ad campaign and the other half distributing it, that organization legally does not have to disclose its donors. organizations which are the sources are not required to, is a limited level of disclosure.

In the Citizens United decision, the Supreme Court explained that disclosure is essential because it "helps citizens make informed choices in the political marketplace." However, the disclosure requirements did not keep up with the changes in types of organizations allowed to participate in election advocacy. 501(c)(4) organizations, the main culprits, only became a real factor in campaign finance after the Citizens United decision in 2010. Disclosure reformers suggest mandating that groups contributing above a certain amount disclose their donors, and the debate is around what that amount should be. In the status quo, 501(c)(4) organizations can only put 50% of their spending towards political advocacy. This is disclosure at the 50% level. The other side of the spectrum would be that any organization who puts any money towards political advocacy has to disclose their donors, or 100% disclosure. It would also be possible to roll back disclosure, so that individuals and corporations are able to spend more on political advocacy without having their names attached.

Enforcement: The **Federal Election Commission** is a 6-person board of Commissioners responsible for enforcing all federal election laws. The FEC is responsible for the enforcement of all campaign finance legislation, meaning that if the FEC doesn't function properly, it does not matter what kind of policies are put in place. The Commissioners are responsible for initiating audits and investigations on individuals and organizations suspected of violating campaign finance policies, and they have an investigative team to conduct the audits and investigations. Current enforcement issues include:

1. Gridlock: A maximum of three Commissioners can be from the same party in order to maintain balance on the board, and four votes are needed to proceed with any board action. While this was intended to stop partisan attacks from the FEC, it causes intense

gridlock. If four Commissioners don't agree, there is no recourse or appeals process to continue pursuing a valid campaign finance infraction. In 2016, with all 6 seats filled, the board gridlocked on 30% of enforcement issues.

2. Empty Seats: The gridlock problem is amplified when the board is not fully staffed. Currently, only four seats are filled, meaning a consensus among the two republicans, one democrat, and one independent on the board is required before instigating any sort of investigation or enforcement. From August 2019 to May 2020, only three seats were filled on the board so the FEC was at a standstill. New Commissioners are first selected by the president and then confirmed by the Senate. Although the board has been short of at least one Commissioner since the early days of the Trump presidency, President Trump has only nominated one replacement, who was recently confirmed.
3. Priorities: One of the FEC's main priorities is focusing on cases where it feels it can have the most impact. That sounds reasonable, but in practice it means that as soon as an organization feels it is genuinely in danger of being penalized by the FEC, it liquidates. The FEC sees little value in investigating or punishing the members of a defunct organization, and so the issue is dropped and the same offenders are free to restart the cycle with a clean record.
4. Statute of Limitations: The statute of limitations for most campaign finance violations is five years, and currently the FEC investigation system does not move quickly enough to prosecute many violators within that time frame. This is especially jarring because for democracy to work effectively, voters would ideally know about campaign finance violations prior to voting in an election, rather than five years after the election when likely the information has no impact on them.

Reformers suggest restructuring the FEC so that it only has five seats; two from each party and one independent. This reform was included in H.R. 1 (2019) a democrat-lead bill which passed in the House but was never voted on in the Senate. H.R. 1 also proposed requiring a majority vote to rule against the recommendation of the investigative body rather than for it, in order to reduce the number of valid campaign finance violations which go unpunished because of empty seats or partisan bias. Additional reform suggestions include creating an appeals process for decisions which don't reach the vote threshold, and increasing the FEC budget in order to mandate faster response times on cases and include investigating defunct organizations in the FEC priorities.

The other perspective is that the FEC was built in a way to ensure gridlock, so that it is nearly impossible for one party to unfairly persecute the financial backers of the other party. This is one valid argument against reforming the structure of the FEC, but does not respond to suggestions for an appeals process, faster response times, and investigations of collusion and smaller organizations.