Campaign Finance Policy Paper
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Guide

1. Executive Summary

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. In 2016, the cost winning federal office was: $957.6 million for the presidency, $19.4 million for a Senate seat, and $1.6 million for a House seat. That year 85.3% of Senate races and 95.4% of House races were won by the candidate which spent the most.

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 campaign 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. 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. Regular PACs work with campaigns to raise and spend, so they have the same contribution limits. Following the Citizens United decision, outside spending increased by 841% over 8 years to $2.8 billion in 2016. Reformers suggest limiting or banning outside spending or improving the public financing system to reduce the potential for corruption.

Disclosure is the policy where sources of campaign or political advocacy (like advertisements) funding are available to the public. The US has limited disclosure, where PACs, Super PACs, and campaigns report all of their donors but the organizations and corporations which donate to them do not disclose their donors so in many cases it is still not clear where the money is coming from. Political spending where the source is not disclosed is called dark money. Disclosure reformers suggest mandating that groups contributing above a certain amount disclose their donors, and the debate is around what that amount should be.

The Federal Election Commission is a 6-person board responsible for enforcing all federal election laws. It struggles with gridlock and partisanship because four people are required to approve any enforcement actions which happens rarely, and it has been short of two members for the past two years. The FEC moves slowly and seldom has consensus, so campaign finance violations are not always punished, and if they are the information does not reach voters until years after the election. Solutions to reform the FEC include creating an appeals process for issues which haven't reached four votes, mandating faster response times, and restructuring the board to streamline enforcement.

2. Introduction

Campaign finance is the system by which money is raised and spent to advocate for a candidate or policies during an election. Every democracy in the world wrestles with what kind of system works best for them. This is important because money gives candidates and activists the ability to reach potential voters and persuade them of their message. Money equates to the size of the megaphone; if you don't agree with what is being said you still won't vote for it, but in our crowded media market the main challenge is getting potential voters to hear your message at all. To understand the campaign finance discussion and develop your point of view, it is essential to understand three main topics: freedom of speech versus equality, disclosure, and enforcement.

<u>First, freedom of speech versus equality in the campaign finance system:</u> Every step taken to ensure the system allows each person an equal voice also limits some people's ability to express their beliefs and ideas. 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. Outside spending, or spending which advocates during an election but is not controlled by a candidate, is

another controversial piece of the puzzle. There are many reasonable perspectives on this issue, and which perspective the US system should adopt is highly contentious.

Second, disclosure: Disclosure is the process of revealing the amount and source of campaign spending to the public. It is a less polarizing issue, but is still debated in the US. One example of disclosure is a Super PAC that spends millions of dollars in a Presidential election and is transparent about the corporations that are footing the bill. Another example is a Congressional candidate sharing the names of every donor who contributed to their campaign, and everything in between. The Supreme Court has repeatedly ruled that mandatory disclosure for funding sources is legal, necessary, and the antidote to corruption in the political system, because it allows voters to weigh the merits of an argument while keeping in mind the interests of those putting forward the message. In fact, many view strict disclosure requirements as a way to avoid restrictions on campaign contributions while maintaining efficacy of elections. For example, voters may take a message bashing a climate change activist with a grain of salt if they know the ads are paid for by a logging company, which many see as preferable to banning the logging company from donating altogether. However, some argue this denies all individuals the opportunity to be listened to fairly, because people may weigh messages with a preconceived bias depending on where the messages come from. This is not a widely-shared belief, and the main issue in the disclosure debate is to what extent should disclosure exist, not whether it should exist at all.

Third, enforcement: Whether American laws should be enforced cannot and should not be up for debate. However, the current US campaign finance system relies on enforcement from the Federal Election Commission and there are questions about whether this system and structure is an effective enforcement method. Many feel the FEC has a deeply flawed structure. At its worst it has become a tool for those who do not agree with current policies to stop them from being implemented, but even without intentional sabotage the FEC does not appear to be currently capable of enforcing the campaign finance legislation that safeguards American democracy. This is the least divisive topic of the three, but equally important. The main issue is finding the most effective way to restructure the FEC.

Campaign finance reform is a uniquely challenging political issue. Every person in elected office who would play a role in reforming the system is also a byproduct of the system, because they were elected and funded using the existing rules. It is difficult for a politician to call for, for example, a ban on outside spending when they were likely elected through a campaign reliant on outside spending. As elections become more and more expensive, it becomes harder and harder for elected officials to rail against the system for fear of alienating the funders they need to win reelection. Recently, there has been a movement on the progressive side of the Democratic Party to refuse support from Super PACs and corporations, essentially taking campaign finance into their own hands. While this is an interesting development, neither party has put forward meaningful campaign finance reform.

Appendix 1 provides a description of key terms relating to campaign finance. For those new to the field of campaign finance, it can be helpful to either read Appendix 1 in advance or refer to it while reading the report.

3. Historical Overview of US Campaign Finance Reform

Pre-1971 System

Prior to the Federal Election Campaign Act and its amendments, the US passed a series of laws regulating campaign finances to limit corporate and union campaign contributions and manage disclosure of contributions to the public. The system was patchwork, not comprehensive, and lacked a body to oversee and enforce.

Campaign finance issues became apparent during the investigations of President Nixon, which led to an overhaul of the current system and a national desire for robust campaign finance reform.

1971 and 1974: Federal Election Campaign Act and Amendments

The Federal Election Campaign Act and its Amendments (passed 1971-4) provided the basis for the current campaign finance system. They put in place disclosure requirements for all campaign contributions and expenditures, and limits on how much can be contributed per election cycle:

1. An individual could give to a candidate
2. An individual could spend advocating for a candidate (a.k.a. outside/independent spending)
3. An individual could give to any campaign overall (at that time it was $25,000)
4. A candidate could give to their own campaign
5. Each campaign could spend on election activities

All of these limits solely apply to federal elections, not state or local elections. The 1971-4 Act also established the Federal Election Committee (FEC), an independent body to oversee the new regulations, and provided the basis for public funding for federal election campaigns (read more about this system in the Current Policies section).

1976: Buckley v. Valeo

Buckley v. Valeo challenged the constitutionality of the Federal Election Campaign Act and its Amendments[1]. Most of the provisions were found to be constitutional, because they fulfilled the purpose of limiting improper influence from campaign spending on the government without infringing on the First Amendment right to freedom of speech. However, the limits on how much an individual could spend advocating for a candidate (a.k.a. outside/independent

[1] https://www.law.cornell.edu/supremecourt/text/424/1

spending) were struck down, as were the limits on how much a candidate could give to their own campaign, and how much a campaign could spend. In that decision, the Supreme Court decided that the value of outside spending is decreased, "probably not by 95%."[2] This means that the Supreme Court viewed spending on behalf of a candidate which was uncoordinated with the candidate as roughly 6% of the value of a direct campaign contribution, which was not enough value to improperly influence the government. For example, if an individual spent $100 to influence a campaign, that is the equivalent of giving $6 to a campaign. This precedent was never overruled, and still affects contemporary campaign finance laws.

2002: Bipartisan Campaign Reform Act (McCain-Feingold)

The BCRA had two key provisions.

1. <u>Soft money contributions to political parties were banned.</u> "Soft money" is funding which is not monitored by the FEC because it is intended to be spent on local or state elections rather than federal elections [3]. Because soft money was not subject to the same caps and disclosure regulations as hard money (money going to federal elections), it provided a loophole to funnel additional funding into the federal campaign finance system. Corporations could give unlimited amounts of money to the National Democratic Party or the National Republican Party without disclosing their names or the amounts to the public. The national parties could then use the money for anything that didn't specifically identify a federal election or candidate, even if their federal candidates benefited. This included things like voter drives and mobilization efforts, as well as "issue ads" which advocated for a policy position. During the 2001-2002 election cycle, national party committees (both Democrat and Republican) collectively spent $86 million of hard money and $217 million of soft money to state affiliates, including outsized spending in states with competitive senate elections[4].
2. <u>"Electioneering" communications funded by corporations or labor unions were banned.</u> "An electioneering communication is generally defined as 'any broadcast, cable or satellite communication' that is 'publicly distributed' and refers to a clearly identified federal candidate and is made within 30 days of a primary or 60 days of a general election."[5]

2010: Citizens United v. FEC

This court case overturned limits on corporate and labor union spending, or the "electioneering" aspect of the BCRA. The Court found that prohibiting corporate and labor union spending on electioneering communications within 60 days of the election amounted to limiting

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[2] https://www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf
[3] https://www.congress.gov/bill/107th-congress/house-bill/2356
[4] https://publicintegrity.org/politics/the-old-soft-money/
[5] https://www.fec.gov/updates/citizens-united-v-fecsupreme-court/

freedom of speech. An important precedent was also set by the decision. The FEC argued that limiting freedom of speech in this case was necessary because of compelling corruption concerns. The Court overruled this idea, essentially saying limiting independent expenditures did not serve an anti-corruption interest. In the 2008 election cycle, outside spending totaled $300 million. Following the Citizens United decision, outside spending in 2012 totaled $1.2 billion.

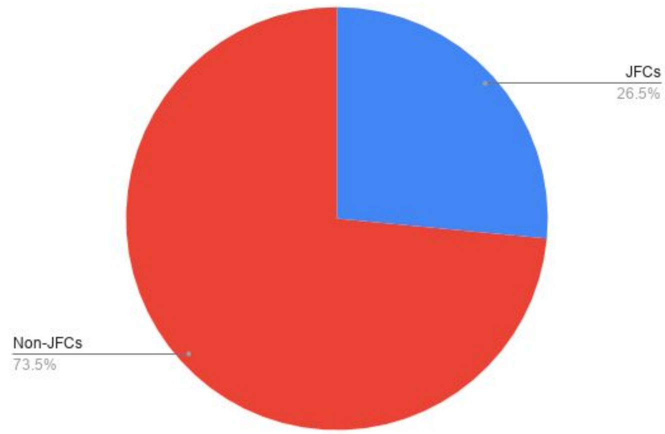
2010: SpeechNow v. FEC

This court case allowed corporations, labor unions, and individuals to contribute to political committees without a limit, based on the idea from Citizens United that funding from independent groups could not be limited by anti-corruption arguments[6]. This led to the creation of Super PACs, or political action committees independent from the campaign which attempts to influence federal election outcomes. Regular PACs are political committees which coordinate with the campaign to raise and spend fundraising revenue. Because Super PACs are not supposed to coordinate with campaigns, they can raise unlimited amounts from individuals and corporations.

2014: McCutcheon v. FEC

McCutcheon v. FEC struck down limits on how a single donor could give to a variety of candidates, PACs, and parties[7]. Individual contribution limits still exist, but limits on the aggregate amount an individual can spend in an election cycle do not. The original principle was established by the 1971-4 Act and Amendments. The McCutcheon decision increased the importance of Joint Fundraising Committees (JFCs), which are coalitions of PACs, parties, and candidates who split the results of fundraising. A single donor can contribute millions of dollars to a JFC, where it is then split between a candidate, national party, and state parties. JFCs raised $1.2 billion during the 2016 election cycle, the most in US history[8]. The following chart shows JFC fundraising made up more than a quarter of all large-dollar contributions in 2016. To view the base data, see Appendix 4.1)

[6] https://www.fec.gov/updates/speechnoworg-v-fec-appeals-court/
[7] https://transition.fec.gov/law/litigation/McCutcheon.shtml
[8] https://www.opensecrets.org/jfc/



(Source: Center for Responsive Politics[9])

Further Reading

- Overview of the 1970s reforms
    - https://transition.fec.gov/info/appfour.htm
- Full version of the Bipartisan Campaign Finance Reform Act
    - https://www.congress.gov/bill/107th-congress/house-bill/2356
- Full version of Buckley v. Valeo decision
    - https://www.law.cornell.edu/supremecourt/text/424/1
- Discussion of the impact of the McCutcheon v. FEC decision
    - https://publicintegrity.org/politics/the-mccutcheon-decision-explained-more-money-to-pour-into-political-process/
- Introductory reading on soft money
    - https://publicintegrity.org/politics/soft-money-primer/
- Soft money post-BCFR
    - https://publicintegrity.org/politics/the-new-soft-money/
- Active Joint Fundraising Committees and the amounts they have raised
    - https://www.opensecrets.org/jfc/

4. Current Policies and Challenges

The Current Policies section begins with state and general policies, and then discusses policies categorized by the three campaign finance themes: freedom of speech vs. equality, disclosure, and enforcement.

State and General Policies

Variation in State Policies

[9] https://www.opensecrets.org/overview/donordemographics.php?cycle=2016&filter=A

Campaign finance policies are divided between federal and state. On a state level, policies vary widely and there are often fewer regulations than at the federal level. Every state requires campaigns to disclose their direct contributors, and the amount of time between the contribution and the reporting deadline varies from state to state. For example, in the ten days running up to Florida state elections, campaigns must report their contributions daily so that voters have the most up to date information going into the voting booth[10]. In Iowa, the last reporting deadline is more than three weeks from the election, so individuals and corporations can contribute the maximum amount to influence the election in the weeks prior, and voters will not be informed about who is funding their candidates until the two months after the election.

Forty-seven states also have disclosure regulations for outside spending, and the requirements vary as much for outside spending as for campaign contributions. New York requires outside spending to be reported within twenty-four hours if it is within thirty days of an election, and New Jersey's requirement is forty-eight hours. In Massachusetts and Minnesota the last deadline to report outside spending is ten days before the election and any outside spending within the last ten days is reported thirty days after. Indiana, New Mexico, and South Carolina do not require outside spending to be reported at all.

Contribution limits also vary by state. Eleven states have no contribution limits, and following data pertains to the other thirty-nine.

	Governor	State Senate	State House of Representatives
National Average	$6,126	$2,947	$2,539
National Median	$4,000	$2,000	$1,600
Highest Limit	$47,100 (New York)	$13,292 (Ohio)	$13,292 (Ohio)
Lowest Limit	$500 (Alaska)	$180 (Montana)	$180 (Montana)

(Source: National Conference of State Legislatures[11])

The states without contribution limits for individual donors are: Alabama, Indiana, Iowa, Mississippi, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia.

State Policies and Soft Money

The 2002 Bipartisan Campaign Finance Act banned national political parties from accepting soft money. This was an important step in limiting the role of unlimited and undisclosed funding impacting federal elections but it did not close the loophole altogether. Instead, associations exclusively involved in local and state politics disaffiliated from their

10 https://www.ncsl.org/Portals/1/documents/legismgt/elect/StateCampaignFinanceDisclosureRequirementsChart2015.pdf

11 https://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx

national democractic and republican counterparts. For example, the Democratic Governors Association and the Republican Governors Association disaffiliated with the National Democratic Party and National Republican Party because they represent governors who run for state office. These associations can still accept soft money and continue the same activities as before, which benefit candidates for federal office. The Governors Associations can allocate their funds towards advertising and voter registration in states like Pennsylvania and Florida in presidential election years or target vulnerable senators from the opposite party when they are up for reelection.

Public Funding for Campaigns

The 1971-4 Act and Amendments established the basis for public funding for presidential campaigns. Funding is available for both the primary and the general election. There are no public funding options for congressional elections. The system differs for primary and general elections. In the primary election, the federal government matches campaign contributions to a candidate who meets certain fundraising goals. In exchange, the candidate agrees to an aggregate limit on spending, a cap on spending from their personal funds, and limitations of spending in each state based on the state's population. In the general election, candidates from major parties can receive a grant which is $103.7 million in 2020. In exchange, the candidate cannot accept private contributions and agrees to a cap on spending from their person funds. An avenue also exists to fund a new or minor party. For more details on the public financing system, see Appendix 2.2.

Campaigns have grown so expensive over the past decade that it is no longer a feasible option for candidates to accept federal funding and forego fundraising events. John McCain, the 2008 Republican presidential candidate, was the last person to use the public financing option. President Trump's winning 2016 campaign cost $957.6 million, which dwarfs the $96.14 million offered to candidates relying on public funding[12]. This is an issue because public funding for presidential campaigns exists so that candidates have the option of getting their message to voters without courting donations. Relying on donations forces candidates to cater to high-income Americans who have disposable income, and corporations.

Freedom of Speech vs. Equality

US federal policies tend to lean more in the direction of freedom of speech. This is due to America's history of prioritizing freedoms above all else, but also because equality-leaning policies which are passed by the US government are ruled unconstitutional by the Supreme Court. This indicates that the priorities of the American people (and their elected representatives) sometimes differs from the Constitutional framework valued by the un-elected Supreme Court

[12] https://www.fec.gov/help-candidates-and-committees/understanding-public-funding-presidential-elections/presidential-spending-limits-2016/

Justices (for more on the background of policies and court decisions, see the Historical Overview section).

Limits vs. Useful Market

There are two main ways to preserve equality in the campaign finance system. The first involves placing limits on spending in a myriad of ways. These limits could apply to the amount an individual can contribute to a campaign, the amount the campaign can spend, the amount an individual can contribute in one election cycle, etc. Limits are generally seen as a more invasive way of preserving equality. The second option is by narrowing the useful market of campaign spending. The useful market is the area where campaign spending can be used effectively to promote a candidate. In the US, the useful market is virtually unlimited because campaigns are not bound to specific time frames or advertising through specific mediums. Narrowing the useful market involves actions like prohibiting tv/radio advertising past a certain amount or limiting the available advertising mediums in some other way, creating a time frame for a campaign before which advertising is prohibited, etc. By narrowing the useful market, individuals are still able to contribute in any way and amount they see fit (thereby preserving some freedom) but the value of their contribution in changing the outcome of the election after the useful market is saturated is minimal.

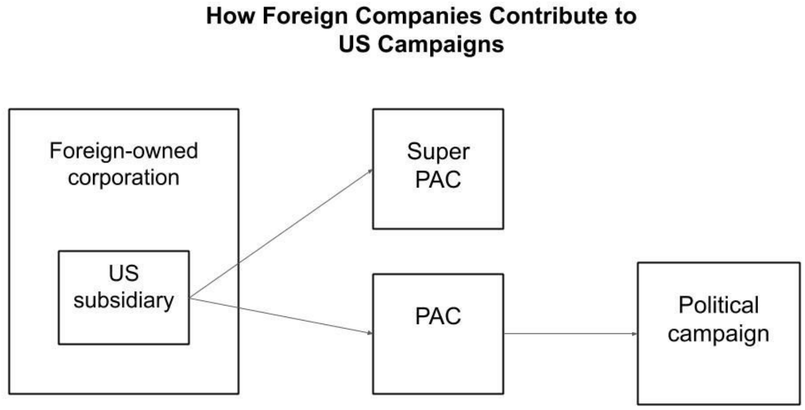
Contribution Limits and Loopholes[13]

Contributions limits are one of the few limits which have been consistently approved by the Supreme Court.

1. Limits are placed on the amount an individual, PAC, and party committee can contribute to campaigns, PACs, and party committees each year. For the 2019-2020 election cycle, individuals can contribute up to $2,800 to a candidate. To see the FEC's full guidelines on contribution limits, see Appendix 2.1.
2. Corporations and labor unions are not allowed to directly contribute to a campaign. However, they can contribute a PAC which directly coordinates with the campaign as well as a Super PAC which advertises on behalf of a campaign.
3. Foreign nationals who do not have US Green Cards are prohibited from donating to US campaigns. However, foreign corporations can donate to US super PACs if they have US subsidiary companies.[14] A subsidiary is a company that is owned by another company, called the parent company. For example: British American Tobacco is a U.K company that purchased Reynolds American, Inc., a US company, in 2017, making Reynolds American, Inc. a US subsidiary. In the 2018 election cycle, Reynolds American, Inc. gave $1.2 million to political campaigns in the US.

[13] https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute/

[14] https://www.opensecrets.org/news/2019/03/citizens-united-foreign-owned-corporations-put-millions-in-us-elections/

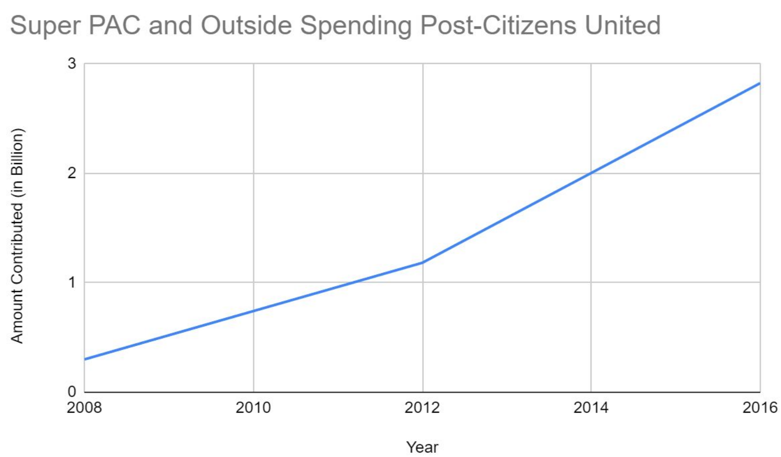


Aggregate limit

At this time there is no aggregate limit on the amount an individual can contribute in one election cycle. This aggregate limit was eliminated in the McCutcheon v. FEC Supreme Court Decision (2014).

Outside spending

Currently, there is no limit on outside spending, or spending on political advertising which is independent of the campaign. The outside spending limitation was eliminated in the Citizens United v. FEC Supreme Court Decision (2010). Since the limits were eliminated, outside spending and Super PAC funds have risen from $300 million in the 2008 election[15] to $2,824.6 million in the 2016 election, an increase of 841% in just eight years.[16]



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15 https://www.brennancenter.org/our-work/research-reports/money-politics-101-what-you-need-know-about-campaign-finance-after#9

16 In this case, Super PAC and outside spending is used as a catch-all term for spending from nonconnected political committees, primarily Super PACs.

(Source: FEC, for base data and sources see Appendix 4.2)

Super PACs are a major conduit for outside spending. It is common for campaigns to communicate strategies to Super PACs in ways which do not violate FEC regulations but undermine the purpose of the Super PAC. The Super PAC is often run by political operatives familiar with the campaign and the candidate, raising questions about whether they can truly be "independent." Furthermore, an in-depth study on independent expenditures spanning both parties found campaigns used strategies like: "creating a campaign advertisement but purchasing little airtime for it, and then putting out an accompanying press release stating that the ad is 'really moving voters,'" or else releasing "b-roll, high-resolution photographs, and targeted talking points, either available through a hidden link on the campaign's website or through some other microsite or YouTube account. Outside groups would then pick up the footage and use it in their own ads."[17] Campaigns are careful not to communicate directly, but instead pass messages through mutual acquaintances or other third parties to ensure Super PACs pick up on their hints. In this way, Super PACs operate much more like regular PACs but without the oversight, regulations, and contribution caps.

Disclosure

All funding from political committees, PACs, Super PACs, and individual contributions is supposed to be disclosed. 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.

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.

Enforcement and the FEC

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 FEC has a board with six Commissioners, as well as a general body. The Commissioners are responsible for initiating audits and investigations on individuals and

[17] https://moritzlaw.osu.edu/thenewsoftmoney/wp-content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf

organizations suspected of violating campaign finance policies. The general body does the investigating and reports back to the board. In 2017, the FEC's budget was $79 million[18]. There are several structural barriers which hamper the effectiveness of the FEC in its oversight and enforcement duties.

1. Gridlock[19]: 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 has also had the effect of causing intense gridlock on the board. 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[20].
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. This has only happened once before in the history of the FEC, when the board only had three seats filled for several months in 2008. 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. For a timeline of all FEC Commissioners and vacancies, see Appendix 2.3.
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. This creates, for lack of a better analogy, a game of dark money whack-a-mole.
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.

[18] https://www.fec.gov/resources/cms-content/documents/FY2017.FEC.AgencyFinancialReportAFR.pdf
[19] https://www.fec.gov/about/leadership-and-structure/
[20] "Dysfunction and Deadlock: The Enforcement Crisis at the FEC Reveals the Unlikelihood of Draining the Swamp", Office of Commissioner Ann M. Ravel, February 2017.

5. Interpretation of Campaign Spending: Commissioners who turned down a campaign finance violation complaint recently came out with reasoning which severely limits the purview of the FEC's enforcement and the definition of a political committee. In the case CREW v. FEC (New Models), the Commissioners reasoned that contributions to Super PACs did not count towards the 50% requirement which makes an organization a political committee and not a social welfare organization. This is important because social welfare organizations do not have to disclose their donors but political committees do, and in many occasions the only thing separating the two is that 50% requirement. It is also important because the FEC's definition means organizations can funnel unlimited amounts of money to Super PACs without having to disclose their donors, because the FEC does not recognize Super PAC contributions as efforts to influence elections.
6. Interpretation of Prosecutorial Discretion: Currently, if watchdog organizations or other actors disagree with an FEC decision or think they are not fulfilling their role properly, they can sue the FEC in federal court. The court then decides whether the FEC made the right call, and can demand that the FEC reassess their decision. However, in the recent court case CREW v. FEC (CHGO), the court ruled that virtually any time the FEC claims "prosecutorial discretion" it has the right to dismiss any violation it sees fit. Prosecutorial discretion is the concept that the FEC is best informed on its own enforcement priorities, use of resources, and the likelihood of success in a trial. It is not meant to be a catch all excuse for avoiding oversight, but that is the current status quo.

Many of these issues can be seen in the story of the FEC investigation of New Models. New Models registered as a 501(c)(4) social welfare organization and put more than $3 million in 2012 towards Super PACs to influence the 2012 election in one party's favor. This amounted to nearly 70% of New Models' total spending that year. CREW, a nonprofit watchdog, reported New Models to the FEC in 2014 for violating campaign finance law. The FEC's general body investigated New Models and, in 2015, recommended that the board take action against New Models for influencing a federal election without registering as a political committee and disclosing its donors. New Models liquidated that same year. No action was taken until two years later, in 2017, when the FEC voted on the New Models issue with only four seats filled. The board was split 2-2, with the two Commissioners from the party which New Models supported voting to dismiss the case. The case was then dismissed because of the 2-2 standstill and no action was taken against New Models or the people running it.

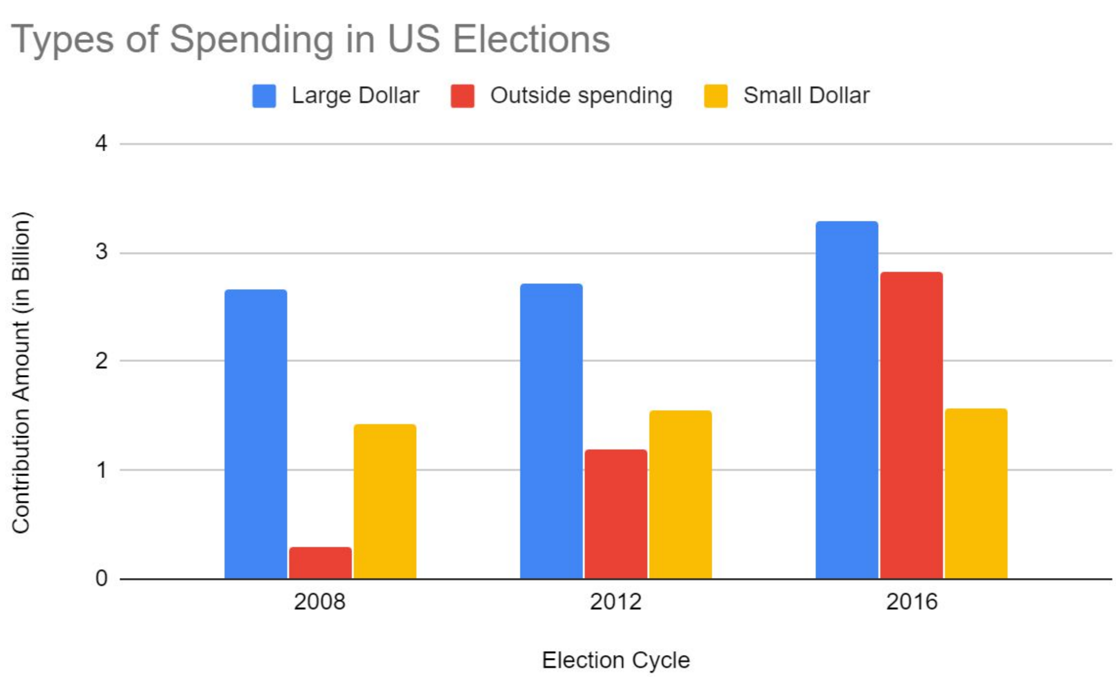
Read More

- Overview of every state's disclosure policies
  - https://www.ncsl.org/Portals/1/documents/legismgt/elect/StateCampaignFinanceDisclosureRequirementsChart2015.pdf
    - Campaign disclosure

- https://www.ncsl.org/Portals/1/documents/legismgt/2014_Independent_Expenditures_Chart.pdf
  - Independent expenditure disclosure
- Overview of every's state contribution limit policies
  - https://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx
- CREW v. FEC (CHGO)
  - https://campaignlegal.org/cases-actions/crew-v-fec-chgo
    - Broad overview of the case
  - https://www.citizensforethics.org/lawsuit/crew-v-fec-chgo/
    - Case in more detail
- CREW v. FEC (New Models)
  - https://campaignlegal.org/cases-actions/crew-v-fec-new-models
    - Broad overview of the case
  - https://www.citizensforethics.org/press-release/crew-files-fec-and-irs-complaints-against-new-models/
    - Case in more detail
  - https://transition.fec.gov/law/litigation/crew_180076.shtml
    - Database of all legal documents relating to the case

Current Data

Spending Types in the Status Quo



(Source: FEC, for base date and sources see Appendix 4.3. Please note there was no available data for small dollar contributions in 2008 so the demonstrated amount is based on estimates..)

This data demonstrates that large dollar contributions have dominated political expenditures, and Super PAC spending is increasing dramatically following the Citizens United decision. Large dollar contributions are more than $200 and they are consistently made by less than 0.5% of American citizens[21] and are commonly channeled through Joint Fundraising Committees which allow one mega-doner to write a single check and max out contributions for every level and candidate of a political party.

Impact on Election

Some citizens may be tempted to assume that ideas win out over money, but with few exceptions that proved to be false. In 2016 95.4% of House races and 85.3% of Senate races were won by the candidates who spent the most.[22] These percentages are consistent in elections throughout the 21st century. That same year, the average winning House seat cost $1.6 million and the Senate seat cost $19.4 million[23]. A handful of high-profile wins by candidates with less funding (President Trump against Hillary Clinton and Jeb Bush, the rise of AOC, etc.) are used to create the myth that money doesn't substantially impact the outcome of an election. But these are a few exceptions to the rule, and they stand out because they overcame a system stacked against them rather than because the system wasn't stacked. Because individual contributions can only be raised $2,800 at a time, and even that amount is outside the bounds of possibility for the average American, it makes far more sense strategically to fundraise from large corporate donors who can donate unlimited amounts to a Super PAC. The connection between spending and election success incentivizes candidates to appeal to corporate interests that can afford to write big checks. Corporations want something in return for their financial support, like industry-specific regulation changes, which distorts the policy priorities of politicians.

5. Policy Alternatives and Reforms

This section begins with campaign finance systems in other democracies and the reforms implemented in those countries, then discusses recent efforts to reform the US system, and concludes with a discussion of other potential reforms which is divided into freedom of speech vs. equality, disclosure, and enforcement.

Campaign Finance in Other Democracies

Overview

[21] https://www.opensecrets.org/overview/donordemographics.php?cycle=2016&filter=A
[22] https://www.opensecrets.org/elections-overview/did-money-win
[23] https://www.opensecrets.org/news/2016/11/the-price-of-winning-just-got-higher-especially-in-the-senate/

While the US system leans towards preserving freedom of speech, many European campaign finance models are designed to produce fairness and equality in the electoral system. These two values compete in campaign finance, where equality necessarily means lifting up some and limiting others to create an even playing field. In the Buckley v. Valeo decision (read more about Buckley v. Valeo in the Historical Overview section), the Supreme Court stated "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."[24] This divergence in values is the root of the differences which arise between the systems. It is important for citizens to consider if the tradeoff is worth it to them, and if the benefits of unfettered freedom of speech outweigh the cost of a government more susceptible to corruption and less responsive to the needs of the segment of the population that cannot afford to contribute to political campaigns.

It is also worth considering that the US system has produced one of the lowest voter turnout records in the developed world. While there are undoubtedly many factors which lead to low voter turnout, the emphasis on freedom of speech does not seem to bolster Americans' interest in elections or elected officials, and limitations on outside spending, advertising, and campaign time frames have not had a chilling effect on democratic turnout in the countries which implemented them. To see US voter turnout data from 1800-present, see Appendix 2.3.

[24] https://www.law.cornell.edu/supremecourt/text/424/1

(Source: Pew Research Center[25])

Reforms Implemented in Other Democracies

Limiting the campaign time frame

The longer a campaign is, the more expensive it has to be to sustain itself so limiting the time frame reduces the necessity of expensive campaigns. However, this system could also be seen as favoring the incumbent, because they have the ability to be seen by the public and make a positive impression throughout their time in office while the challenger is more limited to the campaign time frame in their ability to reach voters. In addition, it could be argued that limiting the time frame of a campaign makes it harder for voters to become informed on candidates and issues.

Allocate TV and radio time

Many countries give all candidates equal access to TV and radio advertising, free of charge. TV advertising is usually the most expensive part of a campaign, so allocating it would reduce the cost of the campaign overall and give each candidate equal opportunity to reach voters.

Ceiling on overall spending

A ceiling on overall spending reduces the importance of donations and slows the ever-increasing costs of elections. A ceiling was introduced in the 1971-4 Campaign Finance Act and Amendments, but was struck down by the Supreme Court Case Buckley v. Valeo.

Public financing system

The public financing system in the US was effective for decades, but the cost of a successful presidential campaign continued to rise and the public financing system did not increase at the same rate. This made the system impossible for presidential candidates to use, even if they believed in the principle. Reforming this system in a sustainable way would require some other limitation on the useful market, otherwise the system would become obsolete again as campaign costs continue to rise. Public financing could also be expanded to Senate and House campaigns.

Many other democracies have public financing systems for their equivalent of presidential and congressional elections. Some countries match all small dollar contributions to candidates in order to amplify their effect. Another strategy is to give public funding to candidates based on the percentage of the vote they received in previous elections.

Recent Efforts to Reform

[25] https://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries/

H.R. 1 For the People Act of 2019

The first bill passed by the House in 2019 included meaningful campaign finance reform. This bill was not passed in the Senate. It requires the FEC to conduct an audit after each election cycle to assess whether any illicit foreign funds were used. The bill also tightened disclosure requirements for political committees and LLCs but not for other organizations not already covered by disclosure requirements like 501(c)(4)s. The For the People Act also created public campaign financing infrastructure. It provided for the establishment of a Freedom From Influence Fund, which matched small dollar contributions to House candidates, and provided each citizen with a $25 voucher to contribute to a House candidate.

In addition, the bill proposed reforming the FEC by making it a five-person commission instead of six. Currently, no more than three Commissioners can be from the same party, but this reform would instead limit each party to two Commissioners with the fifth Commissioner completely independent from either party. Resolutions would pass with three votes instead of four. In the status quo, it takes four commissioners to agree that a violation has occurred in order to take action against the party being investigated. H.R. 1 changes the FEC process so that a majority of Commissioners would have to disagree with the general body's conclusion in order to stop action being taken. This means that instead of a quorum being required to proceed, a quorum would be required to *not* proceed.

Federal Election Administration Act (2016)

The Federal Election Administration Act was introduced into the Senate by Tom Udall of New Mexico, but it was never voted on. This Act would abolish the FEC and replace it with a Federal Election Administration (FEA), similar in structure to the reformed version suggested in H.R. 1. It would also include an empowered chairperson to streamline the administrative process and increase accountability. Other agencies with enforcement obligations (like the EPA) use administrative judges to enforce decisions about violations. This bill creates that policy for the FEA to create a legal process for campaign finance violations which allows for sentencing and appeals.

Constitutional Amendment

An important barrier to meaningful campaign finance reform has been the Supreme Court, which ruled repeatedly against limitations on outside spending, and aggregate spending caps for campaigns and individuals. These limits were ruled unconstitutional because they infringed on the First Amendment, the right to freedom of speech. One solution to this challenge would be a constitutional amendment permitting campaign finance limitations. A constitutional amendment can be ratified in two ways. First, two thirds of the House and Senate vote for it, then three quarters of the state legislatures vote for it. The second path (which has never been used) requires two thirds of states to call a Constitutional Convention and propose amendments, and then three quarters of states to support the amendment.

Multiple constitutional amendments have been introduced in both the House and Senate since the 2010 Citizens United decision. The first amendment was proposed in 2011 and it was called the Saving American Democracy Amendment. It failed to pass in the House or the Senate. Adam Schiff, House Representative from California, introduced a constitutional amendment in 2019 which clarified that reasonable restrictions on outside spending and contribution limits were not prohibited by the Constitution. It also suggested (but did not mandate) that public financing of campaigns was another way to restrict wealth's undue influence on government.

The We the People Amendment was also introduced in 2019, and along with permitting campaign finance restrictions it also clarified that Constitutional rights do not apply to corporations. This is a contentious issue which reaches farther than campaign finance regulations, but is related to Citizens United because the Supreme Court decision allowed corporations to participate in outside spending and express advocacy because of the corporation's right to freedom of speech.

Additional Reforms

Freedom of Speech vs. Equality Reforms

Make Independent Expenditures Independent

In the status quo, "independent expenditures" or outside spending exists in name alone for the majority of spending. Super PACS, often run by close friends of former staff members of the candidate who they are supporting, have an intimate understanding of the goals and objectives of the campaign. Rather than acting as independent conduit of free speech, Super PACs have become an extension of the campaign with unlimited fundraising and spending potential. One way to change this would be to treat collusion between Super PACs and campaigns as insider trading, where any material, non-public information which is used by the Super PAC to influence their advocacy efforts is a criminal offense.

Limit Outside Spending to Buckley v. Valeo Expectations

The Supreme Court in Buckley v. Valeo decided outside spending has 6% of the value of direct campaign contributions to a campaign. Direct contributions are limited to $2,800 per individual, so one solution which is inline with the Buckley decision would be to limit outside spending to $46,667. If you take 6% of $46,667 it is $2,800, so this limit creates essentially the same campaign contribution limit which has already been approved by the courts.

Disclosure Reforms

Appropriate Disclosure Level

A debate rages in the US regarding how extensive disclosure requirements should be. The current level, where PACs and Super PACs must disclose their sources of funding but the 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."[26] 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.

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. However, there are concerns that if political advocacy is a minimal part of an organization's activities, it is not appropriate to connect their donors to the political advocacy. For example, if someone donates to PETA (People for the Ethical Treatment of Animals) they may expect their money to go to maintaining a list of cruelty-free companies, creating and distributing vegan recipes, or advertising about animal welfare issues. If PETA decides to contribute to a Super PAC supporting a presidential candidate, releasing the names of PETA's financial supporters is not only unhelpful, but it actively works against citizens making informed choices in the political marketplace because it muddies the water by bringing in private citizens unconnected to the funding decision.

The next step in disclosure reform is to decide on the new level of disclosure which is beneficial to American democracy in the post-Citizens United era.

Change the Definition of Independent Expenditures

In the status quo, only spending which literally involves distributing the message is considered "political advocacy" meaning the cost of producing advertising campaigns is not included. Paying an advertising firm to develop a commercial is separate from buying air time for that commercial. One way to improve disclosure is by changing the definition of "independent expenditure" to include all aspects of political advocacy, not just buying air time. This broader definition would increase disclosure from 501(c)(4) organizations and provide the American public with a holistic view of money in politics.

Improve Enforcement by Restructuring the FEC

In addition to the FEC reforms which have already been introduced in Congress (although not passed) there are several other structural changes which could improve the process.

1. Require all six seats to be filled at all times. One serious challenge to FEC enforcement is the need for four Commissioners to agree to understand any action for it to pass. The likelihood of an action being undertaken shrinks even further when less than six seats are filled. To solve this problem, there needs to be an enforcement method for requiring all seats to be filled. This could look like requiring a full Commission before any other Senate vote can occur, or mandating that Congress cannot recess. The downside of this

[26] https://transition.fec.gov/law/litigation/cu_sc08_opinion.pdf

strategy is that by enforcing the seat requirement, other elements of the government could be slowed down.

2. Create an appeals process for decisions which do not reach the vote threshold. Currently, if four Commissioners do not approve an action there is no process to continue considering the action. This means that no matter how strongly some Commissioners believe that a violation has occurred, there is no resolution method within the commission. Creating an appeals process, potentially involving an administrative judge, would create an option for enforcing the most serious violations when the threshold cannot be met.
3. Mandate faster response times. There is very little accountability for the years-long deliberation processes commonly found at the FEC. Response times for each step of the process should be mandated so that voters receive campaign finance information in a timely fashion. The FEC should be accountable to a bipartisan committee if it frequently exceeds the reasonable time frames.
4. Change FEC priorities. Currently, the FEC prioritizes cases where it believes it can have the most impact, which creates a loophole where organizations under scrutiny liquidate to minimize the apparent impact of prosecuting their violations. While it is important to ensure FEC enforcement has an impact, the FEC needs to recognize the value of cracking down on organizations utilizing the loophole in order to stop the practice and decrease the misuse of 501(c)(4) organizations in the long run. Making this change could include increasing the FEC's budget for its auditing team so that other impactful cases are not neglected. The 2017 budget was $79 million.

Further reading

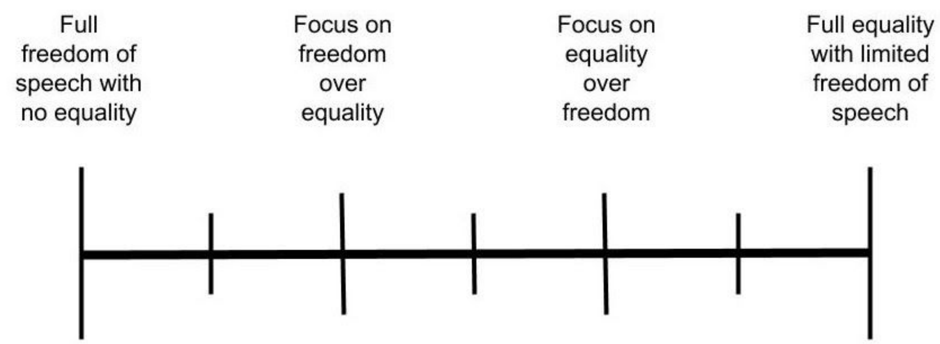
- This Library of Congress report compares the campaign finance regulations of Germany, Israel, France, and the UK.
  - https://www.loc.gov/law/help/campaign-finance/comparative-summary.php
- This report discusses how members of congressional committees can accept donations from special interests they legislate on.
  - https://www.americanprogress.org/issues/democracy/reports/2017/11/30/443502/committee-contributions-ban/
- Elizabeth Warren's signature policy promise during her 2020 presidential bid was to decrease the power of money in politics. This was her policy plan:
  - https://elizabethwarren.com/plans/campaign-finance-reform
- Read H.R. 1 (2019)
  - https://www.congress.gov/bill/116th-congress/house-bill/1/text#toc-H096AF25FA7DB46D6BC1ABEE1FEED8B77
- Read the Federal Election Administration Act
  - https://www.congress.gov/bill/114th-congress/senate-bill/2611

- Read Senator Udall's summary of the bill, and how the FEA would be different from the FEC
    - https://www.scribd.com/document/301502991/Federal-Election-Administration-Act-Summary
    - https://www.scribd.com/document/301503169/FEC-vs-Federal-Election-Administration-Comparison
- Read Rep. Schiff's amendment
    - https://www.congress.gov/115/bills/hjres113/BILLS-115hjres113ih.pdf
- This is Rep. Schiff's press release discussing the amendment.
    - https://schiff.house.gov/news/press-releases/rep-schiff-introduces-constitutional-amendment-to-overturn-citizens-united
- Read the We The People amendment
    - https://www.congress.gov/bill/116th-congress/house-joint-resolution/48
- Read the explanation for why this amendment is important from Move to Amend, one of the organizations supporting the We the People amendment.
    - https://www.movetoamend.org/amendment
- Further reading on potential FEC reforms.
    - https://www.brennancenter.org/our-work/policy-solutions/fixing-fec-agenda-reform

6. Reflection Questions

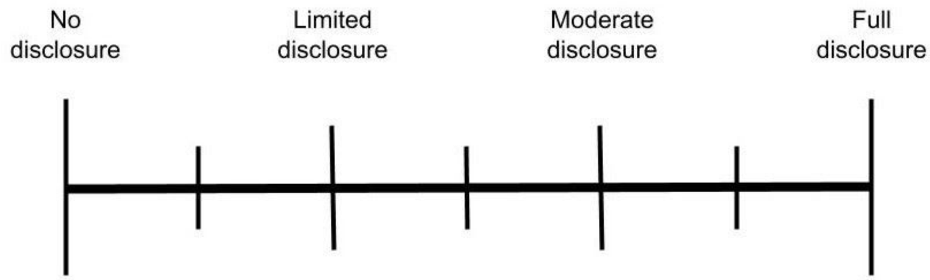
Now that you have finished an overview of the main aspects and challenges of campaign finance reform, consider these questions to help you establish your perspective:

1. Where do I think the US system should sit on this range?

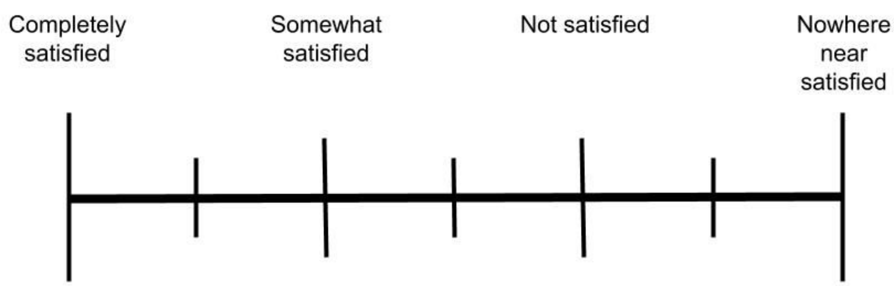


2. How do I feel about where the US's current system sits on the sliding scale of freedom of speech to equality?
3. What aspects of equality in the campaign finance system am I willing to give up to preserve freedom of speech? What limitations on freedom of speech am I willing to trade for equality?

4. Should corporations be allowed to advocate in elections?
5. Should outside spending in elections be allowed?
6. Which reforms (if any) should be undertaken in the freedom of speech vs. equality section of campaign finance reform?
7. Where do I sit on the disclosure range?



8. What level of disclosure in the campaign finance system am I comfortable with? What are the costs and benefits of that level of disclosure?
9. Am I happy with the status quo, where organizations spending 50% of their money on political advocacy do not have to disclose their donors?
10. How satisfied am I with the current enforcement of campaign finance regulations?



11. Would you consider campaign finance reform to be in the top tier of your political priorities?
12. How has your opinion on the importance of campaign finance as a policy issue changed, if at all?

7. Make Your Voice Heard

If you want to see more disclosure, enforcement, or to move towards equality in the campaign finance system:

1. Support reformers: Donate or volunteer for candidates who are not taking Super PAC money or corporate donations, or money from non-disclosing groups. These campaigns and candidates change every election cycle, and ACE maintains a list of those candidates.
2. Donate or volunteer for elected officials who prioritize campaign finance reform.

    a. Senator Elizabeth Warren, Massachusetts: https://www.warren.senate.gov/
    b. Senator Thomas Udall, New Mexico: https://www.tomudall.senate.gov/
3. Contact your representatives: Call or email your House Representative and Senators and tell them you want campaign finance reforms.
    a. Find your House Representative
    b. Find your Senators
    c. Sample email: Dear [Their name], My name is [Your name] and I am a resident of [your district/state]. I am very concerned about our current campaign finance system and I want to see concrete steps to safeguard American democracy. The main reforms I would like to see are [list your main issues, for example: a constitutional amendment allowing for restrictions on outside spending, FEC reform, a public financing system for Congressional races, etc.]. Thank you for time, and I hope you will take the matter seriously.
4. Support the groups working towards reform: There are many organizations who work to shine a spotlight on campaign finance violations and organize/advocate for stricter disclosure rules, enforcement, and equality over speech. You can support them by donating, volunteering, and sharing their content so that it reaches a wider audience. Please also see ACE's frequently-updated list of organizations working towards specific reforms.
    a. Citizens for Responsibility and Ethics in Washington
    b. Campaign Legal Center
    c. Brennan Center for Justice

If you want to see looser disclosure laws and move towards freedom of speech in the campaign finance system:

1. Donate or volunteer for elected officials who combat campaign finance restrictions
    a. Senator Mitch McConnell, Kentucky: https://www.mcconnell.senate.gov/public/index.cfm/home
2. Contact your representatives: Call or email your House Representative and Senators and tell them about the changes you want to see.
    a. Find your House Representative
    b. Find your Senators
    c. Sample email: Dear [Their name], My name is [Your name] and I am a resident of [your district/state]. I am very concerned about our current campaign finance system and I want to see concrete steps to maintain freedom of speech. The main reforms I would like to see are [list your main issues, for example: eliminating mandatory disclosure for Super PACS, raising the individual contribution cap, etc.]. Thank you for time, and I hope you will take the matter seriously.
3. Support the groups working towards looser campaign finance restrictions:

a. Institute for Free Speech
b. Citizens United

Appendix 1: Key Terms

1.1 FEC[27]

The Federal Election Commission, or the FEC, was created by the 1971-4 Federal Campaign Act and Amendments. It is the watchdog agency which monitors adherence to campaign finance regulations and enforces the policies. The FEC is led by six Commissioners who are selected by the President and confirmed by the Senate. By law, only three out of the six Commissioners can be from one political party in order to make sure the FEC maintains bipartisanship. Four out of the six votes are required to approve any FEC action, but currently only three seats are filled on the FEC. It is currently not possible for the FEC to enforce campaign finance regulations in the runup to the 2020 Presidential and Congressional elections because the necessary four seats are not filled.

Commissioners serve six year terms, but are able to continue serving past their term until a replacement has been nominated by the President and confirmed by the senate[28]. The seats left open have been vacant from March of 2017, February of 2018, and August of 2019. President Trump has nominated one Republican to fill a seat in September of 2017, but the nomination has stalled, potentially because Republicans and Democrats are usually nominated by the President in pairs to maintain the balance of the Commission (read more about potential reforms to the FEC in the Potential Reforms section).

1.2 Individual contributions

Individual contributions are given by citizens either directly to political campaigns, or to PACs and party organizations which then redirect it to campaigns. Contributions have caps which are adjusted for inflation each year. Campaign and PAC contributions are counted together towards the contribution cap, and party organization contributions have a separate cap.

1.3 Fundraising Organizations

1. Political committees are organizations which contribute more than $1,000 in a year to influence federal elections, and who are either under the control of a candidate or whose major purpose is the election (or nomination) of a candidate. In order for an organization's "major purpose" to be electing a candidate, they have to put 50% of their expenditures for a given year towards influencing federal elections. Political committees provide detailed reporting to the FEC about their expenditures, and disclose their donors and donation amounts.

[27] https://www.fec.gov/about/leadership-and-structure/
[28] https://publicintegrity.org/politics/federal-election-commission-fec-to-effectively-shut-down/

2. PACs (political action committees) are political committees which coordinate with the campaign to raise and spend fundraising revenue. PAC donations are subject to contribution caps and must disclose their donors to the FEC.
3. Super PACs are separate from the campaign, and although they are not allowed to coordinate with campaigns, they are often run by people close to the candidate. Super PACs are not subject to contribution caps, so they can raise unlimited sums. Super PACs were created after the 2010 Supreme Court decision Speechnow v. FEC, where the court ruled that spending not connected to the campaign (outside spending) could not be limited. However, Super PACs still must disclose their donors to the FEC.
4. 501(c)(4) organizations are classified by the IRS as social welfare organizations who do not operate for profit and who exclusively work to promote social welfare.[29] They are not political committees because their major purpose is ostensibly not related to influencing a federal election. They can donate unlimited amounts to Super PACs without having to disclose their donors. The FEC decides what the "major purpose" of an organization is on a case-by-case basis.
5. LLC

1.4 Useful Market

The useful market is the area where campaign spending can be used effectively to promote a candidate. In the US, the useful market is virtually unlimited because campaigns are not bound to specific time frames or advertising through specific mediums. The concept of the useful market becomes important when comparing US policies with those of other countries.

1.5 Types of Money

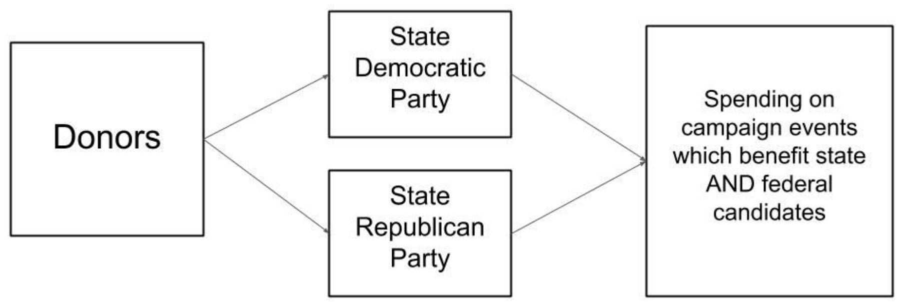
1. Outside spending/independent expenditures are "independent" from the candidate. This spending is often focused on political advertising and issue ads, and "electioneering communications" (banned by the Bipartisan Campaign Reform Act but then ruled allowable by Citizens United v. FEC). Outside spending can come from non-profits, Super PACS, corporations, individuals, etc. Outside spending cannot come from regular PACs, because they coordinate with the campaign. However, there are common strategies and signaling tactics known throughout the industry which allow campaigns to communicate with their Super PACs without technically violating FEC regulations[30] (for more on how this works, read the Current Policies Section, subsection Outside Spending).

[29] https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations

[30] https://moritzlaw.osu.edu/thenewsoftmoney/wp-content/uploads/sites/57/2014/06/the-new-soft-money-WEB.pdf

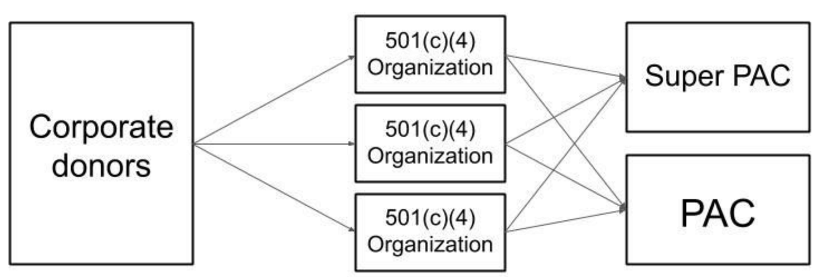
2. Hard money is money which is monitored by the FEC because it is spent on federal elections.
3. Soft money is money intended to be spent on local and state elections, rather than federal elections. This money is regulated on a state-by-state basis, rather than by the FEC, who solely regulates money for federal elections. Soft money is frequently used for things that benefit both state and federal elections, like voter registration drives and ads which advocate specific issues without reference to a federal candidate. Up until the BCRA, national parties could accept unlimited donations of soft money, because it was not subject to the same limits which guided federal campaign donations. Read more about how soft money functioned pre- and post-BCRA in the "Current Policies" section.

How Soft Money Works



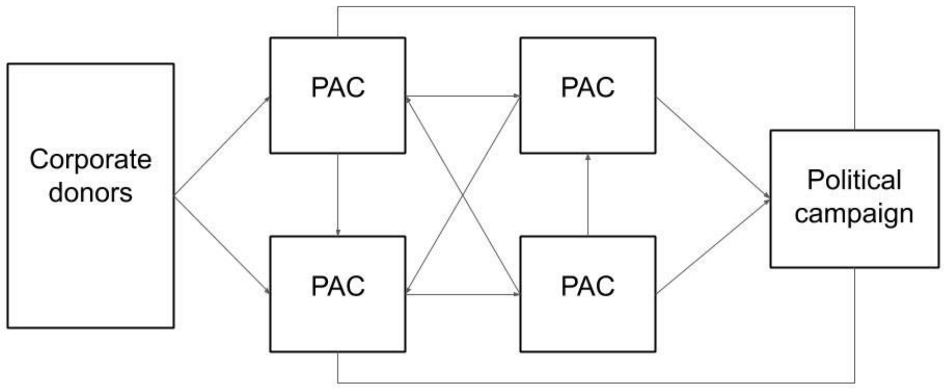
4. Dark money is money which the donor cannot be traced. While PACs and Super PACs have to report their donors, 501(c)(4) organizations and shell companies do not. This causes tension in the campaign finance system, because the Supreme Court has consistently ruled that limitations on spending are unconstitutional so long as the donors are disclosed.

How Dark Money Works



5. Gray money is money that is passed between PACs, which makes it difficult and time-consuming to trace the source. By passing money between PACs, the PACs can maintain the appearance of transparency while still concealing their donor base.

How Gray Money Works



Appendix 2: Current Policies

2.1 Contribution Limits

Contribution limits for 2019-2020 federal elections

		Recipient				
		Candidate committee	PAC† (SSF and nonconnected)	Party committee: state/district/local	Party committee: national	Additional national party committee accounts‡
Donor	Individual	$2,800* per election	$5,000 per year	$10,000 per year (combined)	$35,500* per year	$106,500* per account, per year
	Candidate committee	$2,000 per election	$5,000 per year	Unlimited transfers	Unlimited transfers	
	PAC: multicandidate	$5,000 per election	$5,000 per year	$5,000 per year (combined)	$15,000 per year	$45,000 per account, per year
	PAC: nonmulticandidate	$2,800* per election	$5,000 per year	$10,000 per year (combined)	$35,500* per year	$106,500* per account, per year
	Party committee: state/district/local	$5,000 per election (combined)	$5,000 per year (combined)	Unlimited transfers	Unlimited transfers	
	Party committee: national	$5,000 per election**	$5,000 per year	Unlimited transfers	Unlimited transfers	

(Source: Federal Election Commission[31])

2.2 Public financing for campaigns

In the primary election, candidates must raise $5,000 in 20 states with a maximum of $250 counted per individual donation. The federal government will then match all campaign contributions to the candidate. In exchange, the campaign can only spend $10 million on the primary election, adjusted for inflation (in 2016 the adjusted limit was $48.07 million), limit spending from personal funds to $50,000, and limit spending in each state to $200,000, adjusted

31 https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/

for inflation and the state's population (in 2016 the limit in Wyoming was $961,400 and in California it was $23,092,100).

In the general election, candidates from a major party are eligible to receive a grant of $20 million, plus inflation (in 2020 the available grant is $103.7 million). In exchange, the candidate cannot accept private contributions and can only contribute $50,000 of their own funds. John McCain, the 2008 Republican presidential candidate, was the last person to use this option because the cost of presidential campaigns has risen so much it is no longer feasible to rely on public funds .

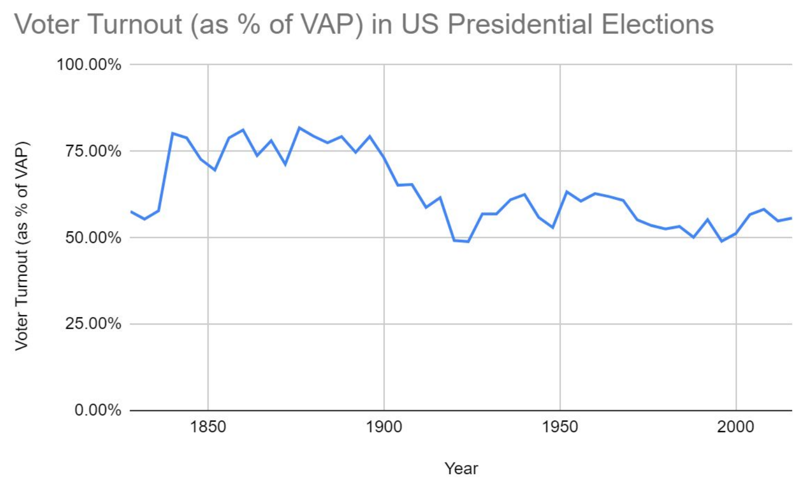
According to the FEC, funding is also available for "minor party" and "new party" candidates. "A minor party candidate is the nominee of a party whose candidate received between five and 25 percent of the total popular vote in the preceding presidential election. The amount of public funding to which a minor party candidate is entitled is based on the ratio of the party's popular vote in the preceding presidential election to the average popular vote of the two major party candidates in that election. A new party candidate receives partial public funding after the election if he or she receives five percent or more of the vote. The entitlement is based on the ratio of the new party candidate's popular vote in the current election to the average popular vote of the two major party candidates in the election."[32]

2.3 FEC Commissioners and Vacancies

Source: https://www.fec.gov/about/leadership-and-structure/commissioners/

2.4 US Voter Turnout

32 https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/



(Source: Pew Research Center[33] and University of Santa Barbara[34])

Appendix 3: Campaign finance in other democracies

3.1 France[35]

France pursues an aggressive campaign finance strategy. Campaign spending has an overall ceiling, and the useful market for campaign spending is controlled because the official campaign time frame is only two weeks long and no advertising is permitted prior to that. Equal time is allotted for TV and radio advertising for all candidates for free, and no other TV/radio advertising is permitted. Corporations, unions, and advocacy groups are not allowed to contribute to a campaign in any way. Individuals can contribute up to 4,600 euros ($4,992) to a candidate per election cycle. France also has a robust public funding system, where candidates are given a starting grant and then reimbursed for up to 50% of the ceiling on expenses if they receive 5% or more of the vote. This system functions for presidential elections and for the French equivalent of the House of Representatives.

3.2 New Zealand[36]

New Zealand has a milder strategy which limits both overall spending and the useful market for outside spending. The ceiling on candidate and party expenditures is a combined US$1,959,000, meaning that is how much the party can spend in total on all of their candidates and on their party message. In New Zealand, elections are more about the party and less about the individual candidate, so the majority of spending comes from the party to promote party messages. Individual candidates can spend a maximum of NZ$26,000 ($17,240). New Zealand permits outside spending, and non-candidates can spend up to NZ$313,000 ($189,500) but not

[33] https://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries/
[34] https://www.presidency.ucsb.edu/statistics/data/voter-turnout-in-presidential-elections
[35] https://www.loc.gov/law/help/campaign-finance/france.php
[36] https://www.loc.gov/law/help/campaign-finance-regulation/newzealand.php

on TV or radio advertising. There is no limit on the amount an individual can contribute to a campaign.

TV advertising is strictly controlled. Each party is given a set amount of TV advertising time to communicate their message, and receive public funding to subsidize the cost of making the advertisement. Both of these allocations are based on the amount of support the party received at the previous election. Candidates can fund their own advertising pursuant to their spending ceiling, but they cannot advocate the party vote or promote negative messages.

Appendix 4: Chart Data

The section contains the base data for charts and graphs made by ACE.

4.1 Joint Fundraising Committees

	Total Amount in US$	Percentage
Large dollar contributions* in 2016 election cycle[37]	4,533,700,000	100
Amount raised by JFCs in 2016 election cycle[38]	1,204,100,000	26.5
Amount of large dollar contributions raised without JFCs	3,349,600,000	73.5

*Large dollar contributions are contributions of more than $200.

4.2 Super PAC and Outside Spending Post-Citizens United

	Super PAC and Outside Spending*
2008	$300 million[39]
2012	$1,183.6 million[40]
2016	$2,824.6 million[41]

*Super PAC and outside spending is used in this case as a catch-all term for contributions to nonconnected political committees, primarily Super PACs and excluding Leadership PACs,

[37] https://www.opensecrets.org/overview/donordemographics.php?cycle=2016&filter=A

[38] https://www.opensecrets.org/jfc/

[39] https://www.brennancenter.org/our-work/research-reports/money-politics-101-what-you-need-know-about-campaign-finance-after#9

[40] https://www.fec.gov/updates/fec-summarizes-campaign-activity-of-the-2011-2012-election-cycle/

[41] https://www.fec.gov/updates/statistical-summary-24-month-campaign-activity-2015-2016-election-cycle/#:~:text=Congressional%20candidates%20collected%20and%20disbursed,in%20the%2024%2Dmonth%20period.

which are subject to contribution limits. The FEC separates independent expenditures and nonconnected political committee disbursements because only the act of disseminating political advocacy counts as an independent expenditure, whereas nonconnected political committee disbursements also include overhead and the cost of producing the advertisement. In 2016, nonconnected political committees (primarily Super PACs) received and disbursed more than $2.8 billion, but independent expenditures only account for $1.6 billion.

4.3 Types of Spending in US Elections

	Large Dollar[42]	Small Dollar[43]	Super PAC and other Nonconnected PACs
2008	$2,654.2 million	No data was available for this amount, so this estimate is based on the trend that close to 65% of individual contributions come from Large Dollar donors.	$300 million[44]
2012	$2,711.5 million	$1,554.6 million	$1,183.6 million[45]
2016	$3,294.4 million	$1,567.3 million	$2,824.6 million[46]

[42] https://www.opensecrets.org/overview/donordemographics.php?cycle=2016&filter=A
[43] https://www.opensecrets.org/overview/donordemographics.php?cycle=2016&filter=A
[44] https://www.brennancenter.org/our-work/research-reports/money-politics-101-what-you-need-know-about-campaign-finance-after#9
[45] https://www.fec.gov/updates/fec-summarizes-campaign-activity-of-the-2011-2012-election-cycle/
[46] https://www.fec.gov/updates/statistical-summary-24-month-campaign-activity-2015-2016-election-cycle/#:~:text=Congressional%20candidates%20collected%20and%20disbursed,in%20the%2024%2Dmonth%20period.