Campaign Finance
AP US Government

"This is going to be an unthinkably expensive election. Case in point: estimates of spending on the presidential race stretch as high as ***$10 billion****."* (Kurtzleben, 2015).

Key terms:
- 527 Group
- Bipartisan Campaign Reform Act
- *Buckley v. Valeo*
- *Citizens United v. FEC*
- FEC
- FECA
- hard money
- independent expenditures
- PAC
- public financing
- soft money
- super PAC

The topic of campaign finance reform is a consistent hot topic in DC and on the campaign trail (Taylor, 2015). What rules about raising money to run for office are fair? Does money play too big of a role in deciding who wins or loses? Is the pursuit for campaign cash just a form of legalized bribery for our future leaders? In order for us to discuss these issues we first need to have an understanding of what is legal in the American campaign finance system.

Why do people give their money to campaigns?
People give money to fund campaigns to participate politically, for political access to the candidate after the election, and to persuade the government for or against a policy.

Where do candidates get their campaign cash from?
Most money comes from private donors in both small and large donations. Sometimes they use their own finances (ex. Mark Dayton and Ross Perot). Most candidates take donations from political action committees (PACs). (Note: PACs are more likely to give to incumbents, candidates who are ahead in the polls, and candidates from major parties.) Candidates also get money from their political party – especially if their party

sees their race as competitive or important nationally. Presidential candidates from the major parties can qualify for and accept public financing from the U.S. government, but the money comes with a spending cap.

What is a PAC and how does it relate to interest groups?
Some interest groups try to influence who gets elected into government so that their lobbying efforts will be easier and donate money to political campaigns of candidates. If an interest group wants to donate money to a campaign legally it is required to establish a political action committee or PAC. PACs file reports with the Federal Election Commission and can legally donate to candidates whereas interest groups cannot.

Key Background to Campaign Finance:
The U.S. Congress has been regulating the financing of elections since 1907, but most of the regulation of campaign finance has occurred since 1971 after the Watergate scandal. In 1972 Congress passed the **Federal Election and Campaign Act (FECA)**. FECA had overall goals of tightening reporting requirements for contributions & limiting expenditures.

–1. It created the **Federal Election Commission** (FEC) to administer campaign finance laws and enforce compliance with their requirements. The FEC enforces the election laws from Congress. The FEC requires that candidates in federal elections disclose who gives, how much they've received, and what the funds are spent on. The FEC also enforces the laws made by Congress about federal campaigns including: donation limits, spending caps, and regulations against foreign contributions.

–2. It created the **public financing system** for the presidential race. Through public financing candidates can qualify for money to help finance their run for president. Candidates can qualify for matching funds for the primary election if their party got 5% in the previous election. Candidates can also get funds for the general election but then need to agree to campaign spending limits. Public funds come from a $3 check off on your income taxes. Public financing also pays for party conventions. In 2008 both parties got $50 million.

Obama did not accept the funds in 2008 and McCain did. McCain and other political strategists have summed up the 2008 election as proving that if you are a successful major party candidate it is better to NOT accept the public financing so that you can spend as much money (aka buy as many ads as you want) in the last weeks of the election.

The FECA of 1974 tried to control the exploding amount of money in politics; but ironically lead to the power of **political action committees (PACs).** A **PAC** is political committee that raises and spends limited **"hard" money** contributions for the expressed purpose of electing or defeating candidates or for issue advocacy. PACs can represent the interests of a union, a business group, or a political issue. A PAC must register with the Federal Election Commission within 10 days of its formation, providing the name and address of the PAC, its treasurer and any affiliated organizations. In 2004 election there were over 3,863 PACs according to the FEC. (Many interest groups choose to have PACs and many PACs are attached to interest groups but they are not the same thing.)

In 1976 parts of FECA were challenged in court. In 1976 the U.S. Supreme Court made its first major campaign finance decision in ***Buckley v. Valeo***. In Buckley the U.S. Supreme Court decided that campaign donations were a valid form of political speech and therefore protected by the First Amendment in the Bill of Rights.

The U.S. Supreme Court examined FECA and upheld most of the law. It said ruled it was legal to put limits on campaign contributions, to require contribution disclosure, to give public money for running for president, to limit how much candidates could spend and to ban independent expenditures. But it struck down (declared illegal) the part of FECA that limited how much money an individual candidate could spend on their own campaign because that would be limiting their free speech in politics.

FECA stood as the law of the land until 2002 when Congress passed the 2002 **Bipartisan Campaign Reform Act** (also referred to as the BCRA or as McCain-Feingold). Senators McCain and Feingold authored the bill hoping to close the loopholes in FECA which included:
•**Soft money**: unregulated & unlimited donations from political parties which indirectly help the candidate like voter registration drives in targeted communities of potential voters and issue ads– not hard money which is money given directly to the candidate.
•**Independent expenditures:** ads or campaigning done by a PAC which helps the candidate but is not coordinated with the candidate's campaign – there can be NO communication with the campaign.

In 2002 Congress passed the **BCRA or McCain-Feingold Act** which:
·Banned the national political parties from accepting or spending "soft money"
·Restricted the broadcast of issue ads 60 days before election day
•Increased the cap on direct donations (hard money) to the candidate from individuals

from $1000 to $2000 for the primary and then again for the general election. It tried to make "hard money" donations under $2,000 more vital important because it decreased the amount of money candidates could get from other sources

Loopholes in McCain-Feingold included:
***527 Groups** can receive unlimited contributions. The money must be spent on "issue advocacy" & cannot use the word "vote" in the ads. 527 groups spent 424 million in 2004. Ex – Swift Vote Veterans for Truth advertisement which hurt John Kerry and helped George W. Bush
***501 (c) Groups** are non-profit, tax exempt groups organized under section 501 (c) of the IRS code that can engage in varying amounts of political activity. 501(c) (4) groups are commonly called "social welfare" organizations that may engage in political activities as long as these activities do not become their primary activity.

Neither a 527 nor a social-welfare group could engage in "express advocacy" — that is, overtly making the case for one candidate over another. Nor could they use corporate money for "electioneering communications" — a category defined as radio or television advertising that even mentions a candidate's name within 30 days of a primary or 60 days of a general election.

The U.S. Supreme Court has heard many contentious cases about the BCRA since its passage, but the Citizens United case is the most recent and most important to understand.

Citizens United v. FEC (2010)
The US Supreme Court held that the First Amendment prohibited the government from restricting independent political expenditures by corporations and unions. In a 5–4 decision, the Court held that portions of BCRA violated the First Amendment. They struck down the electioneering communications ban in the BCRA. The Court, however, upheld requirements for public disclosure by sponsors of advertisements (Citizens, 2015; Davis, 2014).

The New York Times explained the significance of this decision, "First, the Supreme Court wiped away much of the rigmarole about "express advocacy" and "electioneering." Now any outside group can use corporate money to make a direct case for who deserves your vote and why, and they can do so right up to Election Day. The second change is that the old 527s have now been made effectively obsolete, replaced by the super PAC. The main difference between a super PAC and a social-welfare group, practically speaking, is that a super PAC has to disclose the identity of its donors, while social-welfare groups generally do not.” (Bai, 2014).

The main loophole in campaign finance today is the funding of super PACs. **Super PACs,** officially known as "independent-expenditure only committees," may not make contributions to candidate campaigns or parties, but may engage in unlimited political spending independently of the campaigns. Also unlike traditional PACs, they can raise funds from individuals, corporations, unions and other groups, without any legal limit on donation size. Super PACs were made possible by the US Supreme Court decision *Citizens United v. Federal Election Commission*. Super PACs are not allowed to coordinate directly with candidates or political parties.

Matt Bai summed up the changes in the law in How Much Has Citizens United Changed the Political Game, “Citizens United and a couple of related court decisions changed all of this in two essential ways, and each of them was more incremental than transformational. First, the Supreme Court wiped away much of the rigmarole about “express advocacy” and “electioneering.” Now any outside group can use corporate money to make a direct case for who deserves your vote and why, and they can do so right up to Election Day. The second change is that the old 527s have now been made effectively obsolete, replaced by the super PAC. The main difference between a super PAC and a social-welfare group, practically speaking, is that a super PAC has to disclose the identity of its donors, while social-welfare groups generally do not.” (2012).

The Court has continued to uphold it’s *Citizens United v. FEC* decision. Last year, the Supreme Court decided in *McCutcheon v. FEC* that an overall cap on the amount that large campaign donors can give to candidates, parties and PACs in a two-year election cycle violated the First Amendment (Neuman, 2014; Davis, 2014).

Examples of powerful super PACs from 2012 election:

Super PAC	*Who it supports*	*How much it spent in 2012*
Priorities USA Action	allied with President Obama, Democrats	$65 million
Majority PAC	Congressional Democrats	more than $30 million
House Majority PAC	Congressional Democrats	more than $30 million
Restore our Future	allied with Mitt Romney	more than $100 million
American Crossroads	associated with Karl Rove, moderate Republicans	more than $100 million

What is the impact of these changes in campaign finance laws on the power of political parties?

Political parties were already losing in influence before *Citizens United*, but now they have lost a significant amount of political clout. Now a candidate does not need the political resources of her/his party to get the nomination or to get elected. There are also such tight controls on soft money that parties are iced out of the campaign as a heavy hitter. This has instead given Super PACs (and some would argue billionaires) a seat at the table which gives them a lot of power to set the political agenda, to prop up candidates they support, and to take down candidates they detest. Some would argue that super PACs, unlike the two major political parties, are not focused on appealing to moderate Americans and are driving our campaigns to support liberal and conservative candidates (Davis, 2014).

Updated by M. Aby-Keirstead, October, 2015

Info about the money raised so far for the 2016 Presidential election:

- http://www.fec.gov/disclosurep/pnational.do
- http://www.opensecrets.org/pres16/
- http://www.nytimes.com/interactive/2016/us/elections/election-2016-campaign-money-race.html
- http://www.npr.org/sections/itsallpolitics/2015/08/28/434708855/charts-2016-presidential-campaign-finance-fundraising

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