3.7: Campaign Finance, PAC’s, and 527’s

AP U.S. Government
How much does it cost to run for president?

George W. Bush (R) $345,259,155
John Kerry (D) $310,013,730
Ralph Nader $4,563,877

$74.6 million in public financing during the general election

Total spending by all presidential candidates = $717.9 million

How much does it cost to run for president?

Barack Obama (D)  $730 million
John McCain (R)  $333 million


Total spending by all presidential candidates = $1.76 billion
How much does it cost to run for president?

Barack Obama (D) $541 million
Mitt Romney (R) $336 million

Total spending by all presidential candidates = $1.96 billion

Why do we spend so much more today?

- **Expansion of the electorate:**
  - The 17th Amendment was passed in 1913. It instituted the direct popular election of U.S. Senators.
  - About the same time, most states turned from party nominating conventions to direct primaries.
  - With the ratification of the 19th Amendment in 1920, women won the right to vote.

- **Increasing government involvement in the economy:**
  - Corporate tax policy
  - Anti-trust law

- **Cost of mass media**
  - Television markets
  - Internet
Costs of campaigning have risen sharply.

Source: Center for Responsive Politics / OpenSecrets.Org
Where does all this money come from?

Answer #1: Public financing

Do you want $3 of your federal tax to go to the Presidential Election Campaign Fund?

☐ Yes
☐ No

Today, just 11% of taxpayers check off the box that allocates $3 to the federal election campaign fund—down from 28% two decades ago.
What is public funding?

- Public funding of Presidential elections means that qualified Presidential candidates receive federal government funds to pay for the valid expenses of their political campaigns in both the primary and general elections. National political parties also receive federal money for their national nominating conventions.
  - FEC
• Partial public funding is available to Presidential primary candidates in the form of matching payments. The federal government will match up to $250 of an individual's total contributions to an eligible candidate.
Candidates must qualify

- Only candidates seeking nomination by a political party to the office of President are eligible to receive primary matching funds.
- He or she must raise in excess of $5,000 in each of at least 20 states (i.e., over $100,000).
  - a maximum of $250 per individual applies toward the $5,000 threshold in each state.
• Candidates also must agree to:
  • Limit campaign spending for all primary elections to $10 million plus a cost-of-living adjustment (COLA).
  • Limit campaign spending in each state to $200,000 plus COLA, or to a specified amount based on the number of voting age individuals in the state (plus COLA), whichever is greater.
  • Limit spending from personal funds to $50,000.
Impact:

• More candidates can enter the primary election with a meaningful presence
• But: the limits are low enough that many major candidates opt out of the public finance system in the primaries
What you need to know about campaign finance

- **FEC** – Federal Election Commission
- **BCRA** – Bipartisan Campaign Reform Act

**Hard money** = Federal money
- Political donations raised from federally permissible sources within the limits established by BCRA

**Soft money** = Nonfederal money
- Political donations made in such a way as to avoid federal regulations.
Where does all this money come from?

Answer #2: Private donations

- Individuals
- PACs
1974 FECA Amendments

• Imposed contribution limits, including an individual $1,000 limit
• Imposed expenditure limits, including an individual $1,000 limit
• Required disclosure reports to be filed by those collecting contributions or making expenditures
• Created voluntary public financing system for presidential candidates
• Created the Federal Election Commission
Buckley v. Valeo (1976)

The Court upheld the constitutionality of certain provisions of the election law, including:

The Court declared other provisions of the FECA to be unconstitutional, in particular:

- **Limitations on contributions** to candidates for federal office
- Optional public funding of presidential elections
- Reporting and disclosure requirements
- Creation of the Federal Elections Commission (FEC)
- The **limitations on expenditures** by candidates and their committees, except for presidential candidates who accept public funding.

By striking down spending limits, the demand for money increased.
Is Money the Equivalent of “Speech”?

The *Buckley* case would seem to allow spending limits that are "narrowly tailored" toward “compelling governmental interests." Should the appearance of corruption be one of those conditions?
Bipartisan Campaign Reform Act (2002)

• “Hard money” refers to donations made directly to political candidates. These must be declared with the name of the donor, which becomes public knowledge, and are limited by legislation.

• “Soft money” is money that is not made directly to a candidate’s campaign, but is spent on an activity, especially issue advertising, which promotes a candidate’s positions or funds thinly veiled attacks on the opponent’s positions, that obviously benefit the candidate. Since it is not actually received or spent by the candidate’s campaign, there are no legal limits.
• **Political action committees (PACs)** – An organization formed for the purpose of influencing elections on a local, state or federal level. PACs may donate directly to a candidate’s campaign with limits on annual contributions to the PAC.

• **Super PACs** – The FEC also allows for 527 Independent Expenditure PACs (or “Super PACs”). These are groups who make no contributions directly to the campaigns of any candidates, but instead make “independent expenditures” of their money to support their causes. They may engage in unlimited political spending as long as they do not coordinate directly with candidates or political parties. Also unlike traditional PACs, they can raise funds from corporations, unions and other groups, and from individuals, without legal limits. Donors must be disclosed.
527 Groups - A tax-exempt group organized under section 527 of the Internal Revenue Code. These groups raise unlimited "soft money," which they use for voter mobilization and certain types of issue advocacy, but not for efforts that expressly advocate the election or defeat of a federal candidate. They must disclose their donors.

501(c)4 Groups — Nonprofit, tax-exempt groups organized under section 501(c) of the Internal Revenue Code. 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 purpose. These groups are not required to disclose their donors publically.
527s and 501s

- Groups that are not tied to campaigns but engage in political speech
- United States tax code, 26 U.S.C. § 527
  - 527s were the target of McCain-Feingold
    - Short decline, but SCOTUS decision may lead to resurgence
  - A 527 group is created primarily to influence the nomination, election, appointment or defeat of candidates for public office. The term is generally used to refer to political organizations that are not regulated by the Federal Election Commission or by a state elections commission, and are not subject to the same contribution limits as PACs.
  - In 2004, the FEC decided that the law did not cover these independent 527 organizations unless they directly advocated the election or defeat of a candidate.
Independent expenditures, also known as express advocacy, are likely to be limited to ads, flyers, or the like that expressly advocate the election or defeat of a clearly identified candidate by using such words as "vote for," "defeat," or "support" a named candidate for office.

Electioneering communications also refer to a clearly identified candidate, but its message is subject to an interpretation other than it is expressly advocating for or against a particular candidate. Unlike independent expenditures, an electioneering communication does not use words such as "vote for" or "vote against" that expressly call for the election or defeat of the candidate. Only broadcast, cable, or satellite communications that are made within 60 days before the general election or 30 days before a primary, and are targeted to the relevant electorate in certain ways, qualify as electioneering communications.

Issue ads include any ads that address public policy issues and perhaps the position of particular public officials on those issues, but due to their wording or timing do not qualify as either independent expenditures or electioneering communications.
Campaign Finance Reform
Overview

History of Campaign Finance Regulation

• Beginning of time—Civil War: No regulation

• Civil War—1910
  • Gilded Age
    • Exceptionally scandalous politicians nationally
      • Boss Tweed
  • 1868: 75% of money used in congressional elections through party assessments (taxes)
  • 1867: Naval Appropriations Bill
    • First federal effort to regulate campaign finance
    • Aimed at stopping the political shakedown naval yard workers for political contributions
    • Prohibits officers and employees of the fed. gov’t from soliciting contributions
  • 1883: Civil Service Reform Act (Pendleton Act) prohibits the same solicitation of all federal workers
Attempts at reform

• 1867—solicitation of funds from workers at Navy yards outlawed, and workers protected from being fired if they refused to give

• 1877—President Rutherford B. Hayes ordered all government officials to stay out of political activities beyond expressing their views on issues and voting

• 1883—Pendleton Act provided for selection of some federal employees through competitive examinations and shielded them from political assessments
More reform attempts

- 1901 Republican Senator William E. Chandler introduced a bill to bar federally chartered corporations from contributing to elections at any level
  - Unsuccessful
  - “Pitchfork Bill” Tillman induced to follow up
- 1907 “Tillman Act” barred corporate contributions to campaigns
- Teddy Roosevelt, criticized for his money collection, called for legislation to combat bribery, public disclosure of contributions and public financing of campaigns—but he was unsuccessful
Overview
History of Campaign Finance Regulation

- Corrupt Practices Acts of 1911 and 1925
  - Set disclosure requirements for House and Senate Elections
  - Spending limits ($25k for Senate; $5k for House)
  - Ridiculously weak and regularly violated

- 1971: Federal Election Campaign Act (FECA)
The need for money explodes

• The 1968 presidential election vastly increased the cost of presidential campaigns
  • *Selling of the President*
  • Senatorial campaigns would gradually follow suit
    • Then House

• Demand for money for television commercials drove the need for donations

• 1970—Congress passes legislation limiting total spending on broadcast ads and requiring broadcasters to give lowest rates to candidates—Nixon vetoes
• At the end of Nixon’s first term, the Federal Election Campaign Act was passed by Congress
  • Nixon reluctantly signed

• Watergate
  • 1974 Federal Election Campaign Act Amendments
1972 Federal Election Campaign Act

- FECA with amendments was the most sweeping campaign finance reform in history
  - But before the ink was dry, campaign managers were looking for loopholes
- The law was pretty much immediately challenged in the courts
- Eventually, Buckley v. Valeo, decided by the Supreme Court, would limit FECA considerably
Buckley v. Valeo, (1976), was a case in which the Supreme Court of the United States upheld a federal law which set limits on campaign contributions, but ruled that spending money to influence elections is a form of constitutionally protected free speech, and struck down portions of the law. The court also stated candidates can give unlimited amounts of money to their own campaigns.
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<tr>
<th>Original Provision</th>
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<tr>
<td>Expenditure limits</td>
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<tr>
<td>Overall spending limits (Congress and president)</td>
<td>Struck down partially (freedom of speech)</td>
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<td>Limits on the use of candidates’ own resources</td>
<td>Struck down entirely (freedom of speech)</td>
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<td>Limits on media expenditures</td>
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**Campaign Finance Reform and Buckley**
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<td>Individual limits: $1k/candidate/election</td>
<td>Affirmed</td>
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<tr>
<td>PAC limits: $5k/candidate/election</td>
<td>Affirmed</td>
</tr>
<tr>
<td>Party committee limits: $5k/candidate/election</td>
<td>Affirmed</td>
</tr>
<tr>
<td>Cap on total contributions individual can make to all candidates ($25k)</td>
<td>Struck down (freedom of speech)</td>
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<td>Cap on spending “on behalf of candidates” by parties</td>
<td>Affirmed</td>
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Money and Campaigning

• Navigate the Maze of Campaign Finance Reforms
  • Federal Election Campaign Act (1974)
    • Created the FEC to administer campaign finance laws for federal elections.
    • Created the Presidential Election Campaign Fund.
    • Provided partial public financing for presidential primaries (matching funds).
    • Provided full public financing for major party candidates in the general election.
  • Required full disclosure.
  • Limited Contributions.
• Purpose
  • In 1975, Congress created the Federal Election Commission (FEC) to administer and enforce the Federal Election Campaign Act (FECA)
    • the statute that governs the financing of federal elections.
  • The duties of the FEC, which is an independent regulatory agency, are to
    • disclose campaign finance information
    • enforce the provisions of the law such as the limits and prohibitions on contributions,
    • oversee the public funding of Presidential elections.
Purpose

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• The duties of the FEC, which is an independent regulatory agency, are to
  • disclose campaign finance information
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  • oversee the public funding of Presidential elections.
• 1978 FEC rules that FECA allowed for money to be used in grassroots organizing, voter registration, GOTV, without regard to limitations on contributions

• PAC growth
  • 1974—1,146 PACs
  • 1986—4,157 PACs

• Congress applied ruling to parties

• Contributions for these activities came to be known as “soft money”
The Proliferation of PACs

- Definition: Created by law in 1974 to allow corporations, labor unions and others to donate money to campaigns.
- As of 2004 there were 3,868 PACs.
- PACs contributed over $258 million to congressional candidates in 2002.
- Donate to candidates who support their issue, regardless of party affiliation
- Not sufficient data that PACs “buy” candidates
Federal Election Commission

• How was it exploited?
  • Candidate campaign raises money for party committee, then party committee spends it on activities that support the candidate
Soft money growth ($ in millions)

Source: Center for Public Integrity
Committees paid for ads professing to push or oppose issues associated with a candidate without expressly calling for people to vote for or against that candidate

- Source: Center for Public Integrity
- SCOTUS’ “magic words”
  - Vote for XXXX
  - Vote against XXXX
Still more reform

- Clinton/Gore fundraising scandals
- McCain-Feingold
  - Very controversial
  - First Amendment
  - Bias toward major parties
- Opposed by diverse coalition
  - Mitch McConnell
Bipartisan Campaign Reform Act (McCain-Feingold 2002)

• Meant to close loopholes that allowed soft money to flow into campaign committees and to control advertising said to be aimed at issues but actually performing as campaign promotion
<table>
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<th><strong>Eliminated all soft money contributions to national party committees</strong></th>
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<td>Increased individual limit from $1,000 to $2,000 with index for inflation ($2,300 in 2008)</td>
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<td>Banned the use of certain political communications by corporate, union or incorporated non-profit committees within 30 days of primary or convention, or 60 days of general (political communications)</td>
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<td>Millionaire’s amendment</td>
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<td>“Stand by your ad” (“I’m Bruce Lunsford and I endorsed this message”)</td>
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Challenged in *McConnell v FEC*

- SCOTUS (Supreme Court of the United States) allowed the great majority of BCRA to stand
What does Federal Election Law Regulate?

• In General
  • The financing of federal elections

• Specifically
  • Disclosure of financial activity
  • Contributions
    • Receiving and Giving
  • Expenditures
    • Candidate support activities
    • Federal election activities
## Types of Money

- **Federal Funds**
  - Collected from permissible sources
  - Subject to contribution limits

- **Levin Funds**
  - For state and local party committees only
  - Collected from any entity except fed cand.
  - Only used for certain types of FEA

- **Nonfederal Funds**
  - Subject to state law only
  - May be used to pay for expenses related to not federal elections
Where does my money go?

- It depends!
  - Candidate
    - Candidate specific activities
    - Contributions to other candidates, parties or causes
  - DNC/RNC
    - Federal candidates
    - Allocated nationally
  - State Party Committees
    - Federal, state & local candidates
    - Allocated statewide
  - PACs
    - Support candidates, parties that agree on specific issues
  - 527s
    - Separate campaign
What does money have to do with democracy? A great deal!

- It gives wealthy people and groups and unfair advantage in influencing the election outcome;
- It affects who votes and how they vote;
- It becomes a condition for who runs for office and who does not;
- It affects information that the electorate receives about the candidates and their issue positions;
- It affects public perceptions of how the system is working and whether it is fair;

George W. Bush’s innovation

• Bundling
  • Large donors tap their friends for maximum individual donations then give in a ‘bundle’ to the candidate committee
    • $500K bundles used to support Bush’s primary campaign
      • $100K plus “Pioneers”
    • Primary funding total $95.5 million
  • Took federal dollars for general election
While there are disclosure requirements for bundling, they only go into effect when a bundler personally hands over checks. Most campaigns get around the disclosure provision by not having the bundler ever touch the checks.
The Bush and Kerry campaigns evaded the disclosure regulation for earmarked contributions through the new style of bundling activity in which identification numbers are assigned to each bundler, who in turn ask contributors to write the bundler’s ID number on the checks and then give the checks to the campaign on their own. This allowed the bundler to get credit from the campaign for the contributions, while sidestepping the FEC’s official disclosure requirements.
Internet innovations in finance

• Howard Dean developed new means to expand funding through small individual donations collected via the Internet
• Barack Obama expanded on the idea and has generated huge sums through small donations on the Internet
  • $150 million in September 2008
• Ron Paul extremely successful fundraiser during Republican primaries