



Reimagining Rights and Responsibilities in the United States: Money in Politics

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CARR CENTER FOR HUMAN RIGHTS POLICY HARVARD KENNEDY SCHOOL



Money in Politics

Reimagining Rights
& Responsibilities
in the U.S.

Reimagining Rights & Responsibilities in the United States: Voting Rights

Carr Center for Human Rights Policy
Harvard Kennedy School, Harvard University
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INTRODUCTION

As Yogi Berra once said, “A nickel ain’t worth a dime anymore.” Nothing could be truer when it comes to money in American politics. In the 2000 election, candidates and outside groups spent a combined \$3 billion on the presidential and congressional races. Not two decades later, in 2016, the amount spent more than doubled to a combined \$6.5 billion.¹ For 2020, forecasters project that the total amount spent on political advertising alone will reach \$10 billion.²

There’s a simple reason for this exponential rise in political expenditures: the Supreme Court’s interpretation of the First Amendment to preclude the regulation of many aspects of campaign finance. That decision in 1976 first opened the floodgates of contributions to political campaigns. The flood grew to a deluge in 2010 with the Supreme Court’s decision in *Citizens United v. FEC*, which ruled that corporations and other groups could spend unlimited amounts of money on elections.³

Data of presidential campaign spending (1960-2016) shows that loosened restrictions on political funding have precipitated sharp increases in campaign spending.⁴ In fact, data underrepresents the true increase in the role of money in politics because it only captures spending by official campaigns and single-candidate super PACs, but not the more numerous unaffiliated super PACs and other independent expenditures for or against the general election candidates.

For example, while the campaign for presidential candidate Hillary Clinton spent approximately \$600 million between the official campaign and super PACs specifically dedicated to the candidate, the total money raised for Clinton was actually \$1.4 billion, including \$800 million by independent outside organizations.⁵ Of the total amount raised, 98 percent was spent.⁶ This gap between total spending and spending by the campaign dramatically illustrates the role of outside groups in our elections today.

Increased campaign spending is not merely a function of the increased cost of running a campaign—what may be considered a “pull” factor. Rather, the increases in spending point to a “push” factor—the growing influence of major donors on political candidates and their platforms. The revealed increasing role of outside money in federal elections would not be possible without the reduced limitations on political spending that have resulted from Supreme Court cases, particularly in the last 20 years⁷.

All of this cash can have an enormous impact on elections. For House races since 2000, the candidate who spends the most money wins almost 90 percent of the time. That doesn’t necessarily mean that money *causes* the candidate to win—it could also be true that the better candidate attracts more money.⁸ Either way, donors are not spending all of that money for nothing. There’s rarely a direct *quid pro quo* in politics, with an individual or corporation financially contributing in order to obtain a particular legislative or regulatory result, according to campaign finance scholars. However, contributions by wealthy donors not only help elect candidates whose policies they support, but it also grants access to donors through high-cost fundraisers to pitch their desires in person.

More subtly, argues Harvard scholar Lawrence Lessig, campaign contributions create an “economy of influence,” where politicians become so dependent on campaign dollars to run increasingly expensive races that they begin voting for policies they know will make their lives easier next time they have to “dial for dollars” and call to donors to raise cash. That reality has resulted in a system of campaign contributions that is the opposite of free speech: a relatively small number of very wealthy donors, corporations, labor unions, and issue-driven political action committees are able to have an outsized voice when it comes to influencing policy priorities, subverting the very idea of representative democracy.⁹ Nor does the system favor one party over another; both Democrats and Republicans are equally engaged in raising money for elections. In the

1. “Cost of Election.” *OpenSecrets*, Center for Responsive Politics, <https://www.opensecrets.org/elections-overview/cost-of-election?cycle=2020&display=T&infl=N>.

2. Bruell, Alexandra. “Political Ad Spending Will Approach \$10 Billion in 2020.” *The Wall Street Journal*, 4 June 2019, <https://www.wsj.com/articles/political-ad-spending-will-approach-10-billion-in-2020-new-forecast-predicts-11559642400>.

3. Of particular note is the Supreme Court decision in *Citizens United v. Federal Election Commission*. See United States, Supreme Court. *Citizens United v. Federal Election Comm’n*, 558 U.S. 310. 21 Jan. 2010. *Justia*, <https://supreme.justia.com/cases/federal/us/558/310/>.

4. Galka, Max. “How 2016 Compares To 56 Years Of Presidential Campaign Spending.” *HuffPost*, 7 Nov. 2016, https://www.huffpost.com/entry/56-years-of-presidential-campaign-spending-how-2016_b_5820bf9ce4b0334571e09fc1.

5. *Ibid.*

6. Narayanswamy, Anu, et al. “Election 2016: Money Raised as of Dec. 31.” *The Washington Post*, 1 Feb. 2016, <https://www.washingtonpost.com/graphics/politics/2016-election/campaign-finance/>.

7. Buchholz, Katharina. “Outside Spending on Federal Elections Didn’t Become Rampant Until 2012.” *Statista*, 15 Feb. 2019, <https://www.statista.com/chart/17036/outside-spending-super-pac-spending-in-us-elections/>.

8. Koerth, Maggie. “How Money Affects Elections.” *FiveThirtyEight*, 10 Sept. 2018, <https://fivethirtyeight.com/features/money-and-elections-a-complicated-love-story/>.

9. Lessig, Lawrence. *Republic, Lost: How Money Corrupts Congress—And a Plan to Stop It*. 2012.

Nowhere is money felt more than in the explosion of spending by outside groups to elect and influence candidates in the past decade, which have simultaneously increased amounts while decreasing accountability.

2018 cycle, the two parties themselves raised nearly \$1 billion each in campaign contributions,¹⁰ and Democratic candidates outspent Republican candidates, \$2.9 billion to \$2.4 billion.¹¹

Nowhere is money felt more than in the explosion of spending by outside groups to elect and influence candidates in the past decade, which have simultaneously increased amounts while decreasing accountability. That outside spending is typically conducted by three major players: super PACs, joint fundraising committees, and dark money groups. Without limits on the sums of money that can be raised (from corporations, unions, associations, and individuals) and spent, **super PACS** can circumvent restrictions on campaign contributions directly to candidates—so long as they are not *directly coordinating* with campaigns.

Joint fundraising committees allow individuals to give the maximum amounts to an unlimited number of candidates and PACs with one check. In this way, they take advantage of the 2014 Supreme Court decision in *McCutcheon v. FEC*, which eliminated overall spending limits by any individual donor.¹² Indeed, according to the Brennan Center for Justice, “the amount contributed by megadonors who gave six figures or more increased more than 12-fold between 2008 and 2016.”¹³

Lastly, **dark money groups**—political nonprofits with no legal obligation to disclose their donors—prevent voters from even knowing who is spending to influence candidates. Dark money groups now engage in all levels of U.S. elections, including judicial races in states, and spending by these groups reached record levels in 2018.¹⁴ Together, these burgeoning manifestations of

money in politics have negative consequences for democracy by diluting and discounting the value and votes of the tens of millions of constituents who are not major donors.

The primary ways to mitigate money in politics include public financing, improved transparency of donors, and the restructuring of the Federal Election Commission. A constitutional amendment to overturn the original Supreme Court decision equating political funding with political speech should be a long-term goal for regulating campaign finance.

EARLY EFFORTS TO REGULATE CAMPAIGN FINANCE

Campaign finance—and efforts to regulate it—have roots in the mid-nineteenth century. The first federal law on campaign finance, the Naval Appropriations Bill (1867), restricted staff members and officials of the federal government from seeking funding for political campaigns from naval-yard workers.¹⁵ As funding for presidential elections became increasingly prevalent, more comprehensive restrictions were implemented throughout the 1800s into the early 20th century. In 1910, the Publicity Act became the first law to require written public disclosure of all money spent on elections by political parties in House general elections. The Act was amended in 1911 to include Senate and primary elections, require political candidates to disclose their spending, and set limits on contributions to candidates and on the amount a campaign could spend. As with later efforts to rein in money in politics, the Publicity Act was challenged in Supreme Court.

10. “Political Parties: 2018.” *OpenSecrets*, Center for Responsive Politics, <https://www.opensecrets.org/parties/index.php?cmte=&cycle=2018>.

11. “Most expensive midterm ever: Cost of 2018 Election Surpasses \$5.7 billion.” *OpenSecrets*, Center for Responsive Politics, 6 Feb. 2019, <https://www.opensecrets.org/news/2019/02/cost-of-2018-election-5pnt7bil/>.

12. United States, Supreme Court. *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185. 2 Apr. 2014. *Justia*, <https://supreme.justia.com/cases/federal/us/572/185/>.

13. Weiser, Wendy R., and Alicia Bannon. “Democracy: An Election Agenda for Candidates, Activists, and Legislators.” *Brennan Center for Justice*, 4 May 2018, <https://www.brennancenter.org/our-work/policy-solutions/democracy-election-agenda-candidates-activists-and-legislators>.

14. *Ibid.*

15. Unless indicated otherwise, information on historic regulations of campaign finance may be found in “Money-in-Politics Timeline.” *OpenSecrets*, Center for Responsive Politics, 15 Oct. 2019, <https://www.opensecrets.org/resources/learn/timeline>. More information on the role of court cases in shaping money in politics may be found in “Grant to Trump: How court cases influenced campaign finance.” *OpenSecrets*, Center for Responsive Politics, 6 Oct. 2017, <https://www.opensecrets.org/news/2017/10/grant-to-trump-how-court-cases-influenced-campaign-finance/>.

The current system of campaign contributions is the opposite of free speech: a relatively small number of very wealthy donors, corporations, labor unions, and issue-driven political action committees are able to have an outsized voice when it comes to influencing policy priorities, subverting the very idea of representative democracy.

During this early period of the 20th century, corporate contributions to federal campaigns were prohibited. Meanwhile, following the Second World War, Americans became less loyal to political parties, and political communications became more salient in the campaign process. This shift was reinforced by the advent and widespread adoption of television and mass media. As a result, candidates increasingly looked to sources of technical and media expertise to connect with independent voters and build their base. In this context, in 1943, federal legislation provided that labor unions, in addition to corporate entities, were barred from contributing to federal campaigns. With this opportunity removed, unions, trade organizations, and other special interests formed voluntary associations, known as Political Action Committees (PACs), pooling funds from their members to be contributed to specific candidates. This shift in policy gave rise to the PACs that persist to this day.

The following year, in 1944, the Supreme Court decision in *Smith v. Allwright* established that the federal government has the authority to regulate primaries as an element of federal elections.¹⁶ This decision paved the way for the regulation of campaign finance in primaries. In 1971, the Federal Election Campaign Act expanded the requirement of quarterly financial disclosure reports to apply to primary elections for all entities that made political contributions to candidates and all contributions of more than \$100.¹⁷ It also established restrictions on spending by candidates and others on various types of advertising, including broadcasting. However, the legislation was limited in its implementation due to loopholes and weak enforcement mechanisms.

The Watergate scandal in 1972 involved secret political funding and campaign finance misuse, sparking more robust reform. In 1974, amendments to the Federal Election Campaign Act included the institution of the tax “checkoff” program that allows taxpayers to make voluntary contributions to candidates by reducing their refunds on their income tax forms.¹⁸ These contributions provided public funds for presidential campaigns, thus offsetting the role of outside donors. The law also imposed new limits not only on contributions but also on spending in federal elections. Moreover, it created the Federal Election Commission (FEC). The FEC was formed as an independent regulatory agency to provide oversight in campaign finance in federal elections. In addition to enforcing the Federal Election

Campaign Act, the FEC was made responsible for receiving and monitoring disclosure reports. The Commission is led by six Commissioners, no more than three of whom can belong to the same political party.

CAMPAIGN FINANCE, FREEDOM OF SPEECH, AND THE RISE OF SOFT MONEY

While past measures including the creation of the Federal Election Commission continue to shape the role of money in politics today, the most impactful change in campaign finance practices is a long line of Supreme Court cases starting in the 1970s that tie campaign finance to the First Amendment. These decisions established that restrictions on campaign spending may be inconsistent with the First Amendment protection of political speech and are therefore unconstitutional.

The equation of campaign finance with political speech was first made by the Supreme Court in *Buckley v. Valeo* in 1976.¹⁹ The case challenged the post-Watergate reform of the Federal Election Campaign Act. In its decision, the court ruled that while limits on *contributions* were permissible to avoid corruption or the appearance of it, it was unconstitutional to restrict *spending* by individuals, groups, or candidates under the First Amendment. As noted by the Center for Responsive Politics, “this distinction between contributions and spending remains a linchpin of campaign finance law.”²⁰

In 1979, in response to restrictions on their contributions to federal campaigns, corporations and unions began to contribute to political parties. This “soft money” was not originally directed to campaigns, but rather to “party-building” activities at the local, state, and national levels.²¹ There were no limits on such contributions.

As this new mechanism for outside groups to engage in campaign finance emerged, a string of subsequent court cases sought to refine the distinctions between corporations and nonprofit organizations and their respective rights to engage in political contributions. Supreme Court decisions in 1986 and 1990 ruled that nonprofit organizations may use general treasury funds toward express advocacy, including contributions to fund political ads, as long as those organizations did not receive

16. United States, Supreme Court. *Smith v. Allwright*, 321 U.S. 649. 3 Apr. 1944. *Justia*, <https://supreme.justia.com/cases/federal/us/321/649/>.

17. Federal Election Commission. *1971 FECA and Amendment Legislative History*. <https://www.fec.gov/legal-resources/legislation/>. Accessed 15 Oct. 2019.

18. Federal Election Commission. *1974 FECA and Amendment Legislative History*. <https://www.fec.gov/legal-resources/legislation/>. Accessed 15 Oct. 2019.

19. United States, Supreme Court. *Buckley v. Valeo*, 424 U.S. 1. 30 Jan. 1976. *Justia*, <https://supreme.justia.com/cases/federal/us/424/1/>.

20. “Money-in-Politics Timeline.” *OpenSecrets*, Center for Responsive Politics, 15 Oct. 2019, <https://www.opensecrets.org/resources/learn/timeline>.

21. *Ibid.*

funding from corporations.²² In the 1990 case, the Appellee Michigan State Chamber of Commerce, a nonprofit corporation, unsuccessfully argued that restrictions on the use of general treasury funds to contribute to political ads violated its freedom of speech.²³ Despite the precedent set by *Buckley v. Valeo*, the Supreme Court had not yet allowed the invocation of the First Amendment to invalidate campaign finance restrictions on corporations. Therefore, until *Citizens United*, corporations and nonprofit organizations that received corporate funding were still subject to limits on political contributions.

Despite these restrictions, the prevalence of soft money continued to expand throughout the 1990s and into the 2000s. Unions and corporations increased their contributions to “party-building” efforts.²⁴ As these contributions increased, so did the murky nature of their use by the Democratic and Republican parties. Evidence emerged that such funds were being used for the benefit of specific campaigns in federal elections.

As one example, in 1997, President Bill Clinton faced criticism for inviting major supporters to stay overnight at the White House, allegedly in exchange for their contributions.²⁵ These donors contributed over \$5.2 million to the Democratic National Committee between 1995 and 1996.²⁶ These and other revelations led to several investigations into Clinton’s campaign finance practices, including an investigation by the Department of Justice.²⁷ The investigations did not result in charges against officials at the White House, the Democratic National Committee, or the Clinton campaign.²⁸ Moreover, no legal restrictions on soft money were enacted, and soft-money contributions continued to rise.

ENHANCED DISCLOSURE AND TRANSPARENCY

As a result of the Supreme Court’s interpretation of the First Amendment to equate campaign funding with political speech, the expanded role of soft money contributed by outside groups became difficult to limit directly. Beginning in 2000, a series of regulatory efforts took aim at disclosure and transparency requirements as a way to track campaign finance without triggering issues related to freedom of speech.

In that year, the tax law was amended to mandate that “issue groups,” known as 527s, publicly disclose their contributions.²⁹ As entities that were distinct from PACs, these groups did not register with the FEC and therefore were not subject to requirements or oversight regarding the amount or disclosure of their contributions. Additionally, the tax law did not set limits on contributions and spending in federal campaigns for 527s, provided that they did not advocate for a specific candidate’s election or defeat, but these organizations were newly required to disclose their donors to the IRS.³⁰

Additional reforms in 2002 brought further restrictions to outside groups, including 527s. The Bipartisan Campaign Reform Act, better known as the McCain-Feingold Act, expanded disclosure requirements to include not only those organizations that expressly advocate for a candidate but also those that engage in any communications that name candidates leading up to an

22. See United States, Supreme Court. *FEC v. Mass. Cit. for Life*, 479 U.S. 238. 15 Dec. 1986. *Justia*, <https://supreme.justia.com/cases/federal/us/479/238/>; United States, Supreme Court. *Austin v. Mich. Chamber of Comm.*, 494 U.S. 652. 27 Mar. 1990. *Justia*, <https://supreme.justia.com/cases/federal/us/494/652/>. While the Supreme Court decisions only reference but do not define the term general treasury funds, these funds typically refer to all of the assets of an organization that are not allocated to specific efforts or costs, but rather to funding the “necessary, usual, ordinary running and incidental expenses of an organization.” See, for example, Washington State Legislature. WAC 390-05-510. 25 Oct. 2019, <https://apps.leg.wa.gov/wac/default.aspx?cite=390-05-510>.

23. United States, Supreme Court. *Austin v. Mich. Chamber of Comm.*, 494 U.S. 652. 27 Mar. 1990. *Justia*, <https://supreme.justia.com/cases/federal/us/494/652/>.

24. “Big Labor Grows New Muscle.” *The Wall Street Journal*, 1 Aug. 2017, http://online.wsj.com/public/resources/documents/info-LABOR_0801-17.html?printVersion=true.

25. “Clinton Ok’d Using Lincoln Bedroom For Contributors.” *CNN*, 25 Feb. 1997, <https://www.cnn.com/ALLPOLITICS/1997/02/25/clinton.money/>. See also Ebrahim, Margarate. “Fat Cat Hotel.” *Center for Public Integrity Newsletter*, vol. 2, no. 5, Aug. 1996, https://iw-files.s3.amazonaws.com/documents/pdfs/fat_cat_hotel_1996_08.pdf.

26. “Lincoln Bedroom Guests Gave DNC At Least \$5.2 Million.” *CNN*, 24 Feb. 1997, <https://www.cnn.com/ALLPOLITICS/1997/02/25/lincoln.donors/index.html>.

27. “Campaign Finance Special Report.” *The Washington Post*, 14 Nov. 2019, <https://www.washingtonpost.com/wp-srv/politics/special/campfin/background.htm>.

28. Suro, Roberto. “Campaign Fund Probe Winds Down.” *The Washington Post*, 30 May 1999, <https://www.washingtonpost.com/wp-srv/politics/special/campfin/stories/finance053099.htm>.

29. Internal Revenue Service. Internal Revenue Code. I.R.C 527, Political Organizations, <https://www.irs.gov/pub/irs-tege/eotopici89.pdf>; United States Code. Title 26, section 304, *FindLaw*, <https://codes.findlaw.com/us/title-26-internal-revenue-code/26-usc-sect-527.html>.

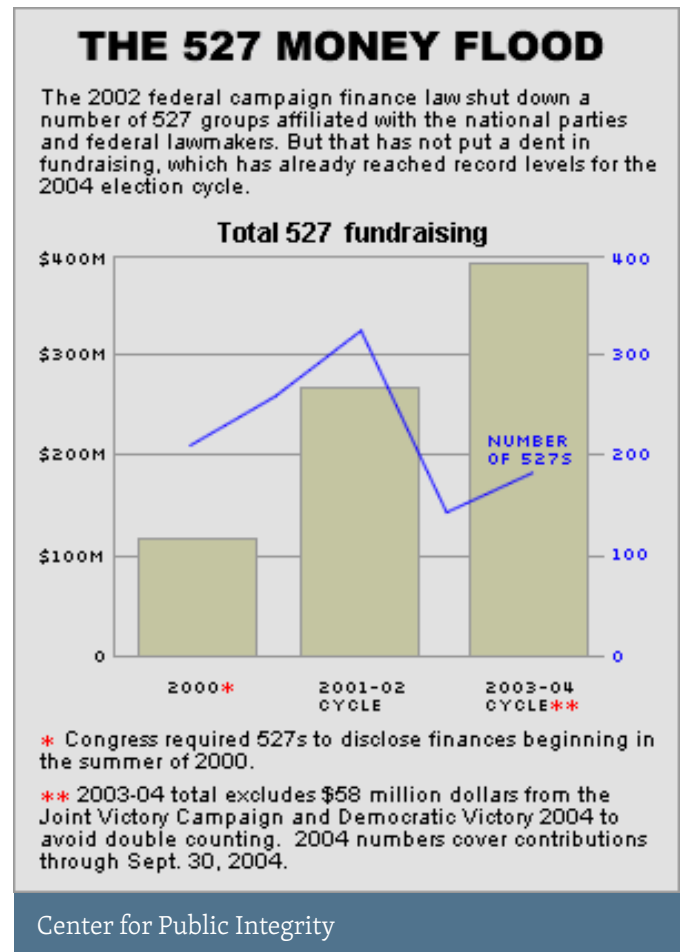
30. DeSilver, Drew, and Patrick van Kessel. “As more Money Flows Into Campaigns, Americans Worry About Its influence.” *Pew Research Center*, 7 Dec. 2015, <https://www.pewresearch.org/fact-tank/2015/12/07/as-more-money-flows-into-campaigns-americans-worry-about-its-influence/>.

election.³¹ These disclosure requirements included the “Stand by Your Ad” provision, which mandated that federal candidates “approve” and claim responsibility for their advertising content.³² The law also restricted contributions to such communications. Moreover, it set contribution limits in relation to inflation and banned the use of soft money for political parties.

While McCain-Feingold reduced the number of active 527 organizations, it did not change the upward trend of contributions provided by “issue groups.”³³ However, this dominant role of 527s was limited to the mid-2000s; the role of these groups has been largely supplanted by super PACs today.³⁴

CHALLENGES TO THE BIPARTISAN CAMPAIGN REFORM ACT

During the years between 2002 and 2010, a series of Supreme Court and U.S. Court of Appeals cases greatly eroded the McCain-Feingold Act. The following table illustrates the provisions of the legislation that were struck down in court decisions from 2003 to 2009. For brevity, the table uses the categories of major provisions of McCain-Feingold defined by the FEC: soft money; electioneering communications (issue ads); coordinated and independent expenditures; contribution limitations and prohibitions; disclaimers, personal use of campaign funds, etc.; and millionaire candidates.³⁵



31. Bipartisan Campaign Reform Act of 2002. Congress.gov, <https://www.congress.gov/bill/107th-congress/house-bill/2356/text>. 107th Congress, House Resolution 2356, passed 20 Mar. 2002.

32. For a study of the impacts of this provision, see Gale, Kristina, et al. “Elections: Effects of the Stand by Your Ad Provision on Attitudes about Candidates and Campaigns.” *Presidential Studies Quarterly*, vol. 35, no. 4, 2005, pp. 771-83.

33. Gao, Nan, et al. “527’s.” *Political Action on the Internet*, Stanford University, <https://cs.stanford.edu/people/eroberts/cs201/projects/2004-05/political-action/527one.html>.

34. DeSilver, Drew, and Patrick van Kessel. “As more Money Flows Into Campaigns, Americans Worry About Its influence.” *Pew Research Center*, 7 Dec. 2015, <https://www.pewresearch.org/fact-tank/2015/12/07/as-more-money-flows-into-campaigns-americans-worry-about-its-influence/>.

35. “Campaign Finance Law Quick Reference for Reporters.” *Federal Election Commission*, 2 Dec. 2019, http://www.fec.gov/press/bkgnd/bcra_overview.shtml.

Case (Year)	Scope of changes	Specific changes in regulation	Remaining provisions of the Bipartisan Campaign Reform Act
<i>McConnell v. FEC</i> (2003) ³⁶	Contributions Spending	Reversed the ban on contributions by minors to federal candidates and parties. Overturned the provision requiring “political parties to choose between coordinated and independent expenditures during the postnomination, preelection period.”	Soft money Electioneering communications Coordinated and independent expenditures (except for the provision that political parties cannot make both coordinated and independent expenditures, but rather must choose between the two) Contribution limitations and prohibitions (except for on minors) Disclaimers, personal use of campaign funds, etc. Millionaire candidates
<i>FEC v. Wisconsin Right to Life, Inc.</i> (2007) ³⁷	Electioneering communications	Created an exception to the provision barring nonprofit organizations and corporations from using their general treasury funds to pay for any broadcast that refers to a candidate for federal office within 30 days of a primary election or 60 days of a general election, provided that the broadcasts represented “genuine issue ads, not express advocacy or its “functional equivalent”	Soft money Electioneering communications (except for issue ads) Coordinated and independent expenditures (except for those struck down in <i>McConnell v. FEC</i>) Contribution limitations and prohibitions (except for on minors)
<i>Davis v. FEC</i> (2008) ³⁸	Contributions	Overturned the Millionaire’s Amendment, which raised the limit on individuals contributions for candidates in House races if their “self-financing” opponent intends to use personal expenditures exceeding \$350,000 in the race	Soft money Electioneering communications (except for issue ads) Coordinated and independent expenditures (except for those struck down in <i>McConnell v. FEC</i>) Contribution limitations and prohibitions (except for on minors) Disclaimers, personal use of campaign funds, etc.
<i>EMILY’s List v. FEC</i> (2009) ³⁹	Spending	Overturned the provisions 1) requiring organizations with both a federal political committee and an affiliated 527 organization to use federal “hard money” to pay at least 50 percent of its costs related to both federal and non-federal elections, and 2) defining contributions to include funds raised in response to solicitations that indicate that the money will be used “to support or oppose” the election of federal candidates. ⁴⁰	Electioneering communications (except for issue ads) Coordinated and independent expenditures (except for those struck down in <i>McConnell v. FEC</i>) Contribution limitations and prohibitions (except for on minors) Disclaimers, personal use of campaign funds, etc.

36. United States, Supreme Court. *McConnell v. Federal Election Comm’n*, 540 U.S. 93. 10 Dec. 2003. Justia, <https://supreme.justia.com/cases/federal/us/540/93/>.

37. United States, Supreme Court. *Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449. 25 Jun. 2007. Justia, <https://supreme.justia.com/cases/federal/us/551/449/>.

38. United States, Supreme Court. *Davis v. Federal Election Comm’n*, 554 U.S. 724. 26 Jun. 2008. Justia, <https://supreme.justia.com/cases/federal/us/554/724/>.

39. “EMILY’s List v. FEC.” Campaign Legal Center, 22 Apr. 2015, <https://campaignlegal.org/cases-actions/emilys-list-v-fec>.

40. *Ibid.*

These court cases collectively served to nullify McCain-Feingold's provisions on soft money and millionaire candidates.⁴¹ They also weakened the restrictions on electioneering communications, coordinated and independent expenditures, and contribution limitations and prohibitions. Indeed, following the 2007 ruling in *Wisconsin Right to Life v. FEC*, electioneering communications supported by corporations, unions, and nonprofit organizations became more prolific in the 2008 elections.⁴² Independent expenditures also ballooned. Furthermore, after *EMILY's List v. FEC* in 2009, soft money was once again used to fund political activities by outside groups in federal, state, and local elections.⁴³

While the plaintiffs in *McConnell v. FEC* challenged McCain-Feingold as a violation of the First Amendment, the Supreme Court left the legislation largely intact.⁴⁴ However, the three latter cases included in the table were more impactful in challenging the constitutionality of the legislation related to freedom of speech. Moreover, these rulings provided additional precedent to justify challenges to McCain-Feingold and legislation at the state level that sought to mitigate the outsized influence of donors and candidates with more financial resources.

In particular, in *EMILY's List v. FEC* and another case the following year, the Court considered efforts to equalize or level the playing field in elections, including the provision of matching funds to less well-financed candidates and restrictions on donor contributions for the sake of "equal voice or influence in the electoral process."⁴⁵ The court decisions in these cases reinforced the view that this intended "equalization" does not represent a "legitimate government objective" and therefore cannot be used as justification for campaign finance regulation.⁴⁶ The decisions followed the precedent set in *Buckley v. Valeo* in 1976 that only

"combating corruption and the appearance thereof" represents a legitimate government objective and thus a permissible reason for restricting "the quantity of speech."⁴⁷ By contrast, "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," and that "the Government's interest in "equalizing the relative ability of individuals and groups to influence the outcome of elections" does not justify regulation."⁴⁸

CITIZENS UNITED AND SUBSEQUENT RULINGS

These formulations on the freedom of speech and political funding paved the way for the most consequential change to campaign finance: the Supreme Court ruling in *Citizens United v. FEC* in 2010. In a 5-4 decision, the court ruled that corporations and other outside groups have a First Amendment right to raise and spend unlimited amounts on elections.⁴⁹ The Justices reasoned that political spending, as long as it is conducted independently from candidates and parties and donors are disclosed, is not corrupt.⁵⁰ Therefore, following *Buckley v. Valeo* and later decisions, there is no justification for restricting the First Amendment right of corporations to engage in unlimited fundraising and spending on advertising for and against specific candidates.

While the Supreme Court did not overturn the limits on direct contributions to candidates, *Citizens United* had a profound impact on the landscape of campaign finance. Along with a later

41. "Total Outside Spending by Election Cycle, Excluding Party Committees." *OpenSecrets*, Center for Responsive Politics, https://www.opensecrets.org/outsidespending/cycle_tots.php?cycle=2020&view=A&chart=N#summ

42. Biersack, Bob. "Outside Spending: The Big Picture (So Far)." *OpenSecrets News*, Center for Responsive Politics, 11 Jun. 2012, <https://www.opensecrets.org/news/2012/06/outside-spending-the-big-picture/>. Biersack notes that the role of electioneering communications could have dropped in elections after 2008 due to the rulings in *FEC* and *SpeechNow.org v. FEC*, which eliminated restrictions on the types of funds that can be used for independent expenditures. He contends that this change could have reduced the appeal of the electioneering communications due to their "less direct" targeting of voters and the legal uncertainty on disclosure requirements for donors.

43. "Money-in-Politics Timeline." *OpenSecrets*, Center for Responsive Politics, 15 Oct. 2019, <https://www.opensecrets.org/resources/learn/timeline>.

44. United States, Supreme Court. *McConnell v. Federal Election Comm'n*, 540 U.S. 93. 10 Dec. 2003. *Justia*, <https://supreme.justia.com/cases/federal/us/540/93/>.

45. United States, Supreme Court. *Arizona Free Enterprise Club's Freedom Club PAC, et al. v. Bennett, et al; McComish, et al. v. Bennett, et al.*, 564 U.S. 721. 27 Jun. 2011. *Justia*, <https://supreme.justia.com/cases/federal/us/564/721/>. and United States, Court of Appeals for the D.C. Circuit. *EMILY'S List v. FEC*. Docket no. 08-5422, 18 Dec. 2009. *Justia*, <https://law.justia.com/cases/federal/appellate-courts/cadc/08-5422/08-5422-1206889-2011-03-24.html>.

46. *Ibid.*

47. United States, Court of Appeals for the D.C. Circuit. *EMILY'S List v. FEC*. Docket no. 08-5422, 18 Dec. 2009. *Justia*, <https://law.justia.com/cases/federal/appellate-courts/cadc/08-5422/08-5422-1206889-2011-03-24.html>.

48. *Ibid.*

49. Lau, Tim. "Citizens United Explained." *Brennan Center for Justice*, 12 Dec. 2019, <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>.

50. *Ibid.*

Supreme Court case in the same year, *Speechnow.org v. FEC, Citizens United* opened the door for the rise of the super PAC.⁵¹ The rulings also gave rise to an explosion in political spending by dark money groups, which are not required to disclose their donors.⁵²

In addition to the stark rise in the prevalence of super PACs and dark money groups following *Citizens United*, a later Supreme Court ruling in 2014 paved the way for a third mechanism for campaign finance, joint fundraising committees. In particular, the court decision in *McCutcheon v. FEC* overturned the limit on overall spending, applying the same reasoning that such limits did not serve to protect against corruption and violated freedom of speech.⁵³ Following this decision, there is no limit on the amount an individual may contribute during a two-year period to “all federal candidates, parties and political action committees combined.”⁵⁴ While the base limits on individual contributions to federal candidate campaigns, PACs, and party committees remained intact, an individual can now contribute the maximum of those base amounts to an *unlimited* number of campaigns, PACs, and party committees.⁵⁵

Between 2010 and 2015, fewer than 200 households funded nearly 60% of all spending by super PACs.

MONEY IN POLITICS TODAY: UNDERMINING THE DEMOCRATIC PROCESS

THE DOMINANCE OF SUPER PACS. Super PACs have proliferated since 2010.⁵⁶ Super PACs may raise and spend unlimited amounts of money pooled from corporations, unions, associations, and individuals, and they may accept funds from any source.⁵⁷ While super PACs cannot directly contribute to or coordinate with candidates or parties, they can utilize the funds they raise to expressly advertise for or against political candidates through independent expenditures in federal races.⁵⁸

Since super PACs are required to disclose their donors to the FEC, it has been possible to track the explosion in fundraising and spending of the groups over the last decade.⁵⁹ These groups raised more than \$600 million in 2012, rising to over \$1 billion by 2016. As of late September 2020, super PACs have already raised nearly \$700 million, about \$100 million more than at a similar time four years ago.⁶⁰

While the Supreme Court has determined that equalization is not a legitimate governmental objective, it is nonetheless important to note participation in super PACs is far from equal. Between 2010 and 2015, fewer than 200 households funded nearly 60 percent of all spending by super PACs.⁶¹ While these megadonors also contribute to Joint Fundraising Committees, the majority of their contributions are usually distributed to super PACs by the end of an election cycle.⁶²

51. Building on its decision in *Citizens United*, the court ruled in *Speechnow.org v. FEC* that outside groups could accept unlimited contributions from both individual donors and corporations, provided that these groups do not directly contribute to candidates. See Maguire, Robert. “Dark money, super PAC spending surges ahead of 2018 midterms.” *OpenSecrets News*, Center for Responsive Politics, 25 Aug. 2017, <https://www.opensecrets.org/news/2017/08/dark-money-super-pac-spending-surges-ahead-of-2018-midterms/>.

52. “Outside Spending by Group.” *OpenSecrets*, Center for Responsive Politics, <https://www.opensecrets.org/outsidespending/summ.php?disp=0>.

53. United States, Supreme Court. *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185. 2 Apr. 2014. *Justia*, <https://supreme.justia.com/cases/federal/us/572/185/>.

54. “McCutcheon, et al. v. FEC: Case Summary.” *Federal Election Commission*, 5 Dec. 2019, <https://transition.fec.gov/law/litigation/McCutcheon.shtml#ac>.

55. Individuals may contribute up to \$2,600 per election to a federal candidate, \$10,000 per calendar year to a state party committee, \$32,400 per calendar year to a national party committee, and \$5,000 per calendar year to a PAC. See *Ibid*. In association with the 2012 election cycle, approximately 650 people hit these limits. See “Money-in-Politics Timeline.” *OpenSecrets*, Center for Responsive Politics.

56. MacColl, Spencer. “Super PAC Registrations Accelerate, Favor Conservatives.” *OpenSecrets News*, Center for Responsive Politics, 17 Jun. 2011, <https://www.opensecrets.org/news/2011/06/super-pac-registrations-accelerate/>.

57. “What Is a PAC?” *Open Secrets*, Center for Responsive Politics, <https://www.opensecrets.org/pacs/pacfaq.php>; “Super PACs.” *Open Secrets*, Center for Responsive Politics, <https://www.opensecrets.org/pacs/superpacs.php>.

58. According to the Federal Election Commission, super PACs cannot spend money “in concert or cooperation with, or at the request or suggestion of, a candidate, the candidate’s campaign or a political party.” See *Ibid*.

59. *Ibid*.

60. *Ibid*.

61. Weiner, Daniel I. “Citizens United Five Years Later.” *Brennan Center for Justice*, 15 Jan. 2015, <https://www.brennancenter.org/our-work/research-reports/citizens-united-five-years-later>.

62. Evers-Hillstrom, Karl. “The Most Generous Megadonors of the 2020 Cycle — So Far.” *OpenSecrets News*, Center for Responsive Politics, 22 Apr. 2019, <https://www.opensecrets.org/news/2019/04/generous-megadonors-of-q1-2020/>.

These trends give rise to a number of concerns regarding super PACs and their role in the democratic process. Super PACs effectively allow for individuals and corporations, and the campaigns they contribute to, to sidestep limits on direct campaign contributions.⁶³ That is, while individuals may only donate \$2,600 per election to a federal candidate and corporations may not directly contribute at all, both individuals and corporations may contribute unlimited sums of money to super PACs that can fund communications that specifically advocate for the election or defeat of specific candidates.

This subversion of spending limits increases the risk that wealthy individuals and corporations will have the outsized influence that legislation like McCain-Feingold has sought to control. Furthermore, the same issue with the revolving door that fuels criticism of the lobbying industry also holds true for super PACs, particularly those tied to specific candidates.⁶⁴ The Campaign Reform Act's restriction on super PACs' coordination with campaigns and parties is thus rendered less effective, as former staff members of such political entities establish and support these outside groups.

In addition, super PACs may engage in a variety of political activities that benefit candidates without those candidates facing any consequences. This concern is particularly salient in the context of attack ads.⁶⁵ While dark money groups are relatively more likely to air negative ads, super PACs nonetheless funded more than 33,000 airings of ads in over a dozen key primary states during the 2016 presidential election.⁶⁶ Candidates do not have to answer for the rhetoric included in those ads, which some critics, including other candidates, have equated to misrepresentative smear campaigns.⁶⁷

THE RISE OF MEGADONORS AND JOINT FUNDRAISING COMMITTEES. Following the 2014 ruling in *McCutcheon v. FEC* overturning limits on aggregate contributions, megadonors have sought new pathways to donate the maximum individual contributions to as many candidates and party committees as possible in a single election cycle.⁶⁸ Joint fundraising committees represent a pathway for these donors to do so at one time. As noted by the Center for Responsive Politics, these committees can be created by two or more candidates, PACs, or party committees to both share the costs of fundraising and split proceeds from donations.⁶⁹ Joint fundraising committees allow megadonors to write one check that is then distributed across as many candidates and committees as they want.⁷⁰

Joint fundraising committees provide a mechanism for circumventing spending limits. In particular, joint fundraising committees distribute contributions to candidates and state and national party committees. While there are caps on contributions to these candidates and party committees, the condition that a donor's contributions to the state parties are "routed straight to" the national committee effectively provides megadonors the opportunity to exceed the contribution limits to the national party.⁷¹

Though joint fundraising committees were already increasing in popularity before 2014, analysts noted that *McCutcheon v. FEC* had the potential to bolster their use.⁷² With the removal of aggregate contribution limits, joint fundraising committees became more valuable to donors as they could involve many, many candidates and party committees. Likewise, these committees could capitalize on their newfound ability to solicit a given donor for a much larger contribution, rather than a greater

63. Goyette, Braden. "Cheat sheet: How Super PACs work, and Why They're So Controversial." *New York Daily News*, 13 Jan. 2012, <https://www.nydailynews.com/news/politics/cheat-sheet-super-pacs-work-controversial-article-1.11005804>.

64. Ibid.

65. Ibid.

66. Bass, Frank. "'Dark Money' Groups More Likely to Sponsor Attack Ads." *MapLight*, 17 Aug. 2016, <https://maplight.org/story/dark-money-groups-more-likely-to-sponsor-attack-ads/>.

67. See, for example, Lohr, Kathy. "Romney, Gingrich Spar Over Negative Super PAC Ads." *NPR*, 21 Dec. 2011, <https://www.npr.org/2011/12/21/144057586/romney-gingrich-spar-over-negative-super-pac-ads>.

68. Evers-Hillstrom, Karl. "The Most Generous Megadonors of the 2020 Cycle — So Far." *OpenSecrets News*, Center for Responsive Politics, 22 Apr. 2019, <https://www.opensecrets.org/news/2019/04/generous-megadonors-of-q1-2020/>.

69. Blumenthal, Paul. "McCutcheon v. FEC's Other Threat: Case Could Super-Size Joint Fundraising Committees." *HuffPost*, 7 Oct. 2013, https://www.huffpost.com/entry/mccutcheon-joint-fundraising-committees_n_4057547.

70. Watson, Libby. "How political megadonors can give almost \$500,000 with a single check." *Sunlight Foundation*, 1 Jun. 2016, <https://sunlightfoundation.com/2016/06/01/how-political-megadonors-can-give-almost-500000-with-a-single-check/>.

71. Watson, Libby. "How political megadonors can give almost \$500,000 with a single check." *Sunlight Foundation*, 1 Jun. 2016, <https://sunlightfoundation.com/2016/06/01/how-political-megadonors-can-give-almost-500000-with-a-single-check/>.

72. Blumenthal, Paul. "McCutcheon v. FEC's Other Threat: Case Could Super-Size Joint Fundraising Committees." *HuffPost*, 7 Oct. 2013, https://www.huffpost.com/entry/mccutcheon-joint-fundraising-committees_n_4057547.

number of smaller donors.⁷³ Indeed, there's been an increase in both the number of joint fundraising committees and the total amount raised by those committees as of mid-2020, with a notable jump in fundraising levels during presidential election cycles in particular.⁷⁴

THE RISE OF DARK MONEY GROUPS. Dark money groups represent nonprofit organizations engaged in political spending—for example, 501(c)(4) (social welfare), 501(c)(5) (unions), and 501(c)(6) (trade association) groups that are not required to disclose their donors.⁷⁵ These organizations can receive unlimited donations from corporations, individuals, and unions, and they can also raise unlimited contributions from nonprofit organizations and “shell” corporations that are not subject to disclosure requirements.⁷⁶

Some expenditures by dark money groups do not have to be publicly disclosed or may be obscured in disclosure.⁷⁷ While these organizations must report spending on their annual IRS 990 forms, they are allowed to submit nonspecific information regarding their expenditures with major vendors, such as “media services.”⁷⁸ In this context, it is possible to obscure expenditures related to direct political advocacy. Even when these organizations are required to disclose political expenditures to the FEC, expenditures for general categories like education do not require specification.⁷⁹ In addition, some political expenditures are not required to be disclosed to the FEC in the first place, such as advertising that does not explicitly advocate for or against the election of a candidate and that does not immediately an election.⁸⁰

The role of dark money groups in elections is growing with each election cycle.⁸¹ In some races, the amount of dark

money spent exceeds the amount of funds disclosed, as exhibited in toss-up Senate races in 2014.⁸² For example, in the Republican campaign in North Carolina during this election cycle, approximately \$22 million of the \$27.5 million spent in the race came from dark money sources; only roughly \$5.5 million was subject to full disclosure requirements.⁸³

This prevalence of dark money extends to federal elections as well. In the 2016 presidential election, outside groups spent over \$15 million but only reported \$5 million to the FEC.⁸⁴ At the same point in the 2012 presidential election cycle, only about \$500,000 had been reported.⁸⁵ These trends demonstrate not only the rise of dark money groups but also the underreporting of political expenditures by these groups.

In summary, dark money groups may pool funds from a range of sources with minimal restrictions and may pursue and fund political activities that serve to influence the decision of a voter, without disclosure of the source of the money.⁸⁶ This trend means that voters do not have a sense of what individuals or entities are funding the political advertising and other communications they see.

STRATEGIES FOR LIMITING THE INFLUENCE OF MONEY IN POLITICS

Despite the proliferation of money in politics and the general weakening of campaign finance law as a result of Supreme Court decisions over the past 50 years, there are still actions that can be taken to limit the flow of cash. One promising proposal is the DISCLOSE Act, introduced in every Congressional session since 2012 to improve transparency and disclosure of political spending.⁸⁷ The most recent iteration would require

73. Ibid.

74. Ibid.

75. “Dark Money Basics.” *OpenSecrets*, Center for Responsive Politics, 7 Nov. 2019, <https://www.opensecrets.org/dark-money/basics>

76. Ibid.

77. “Dark Money Process.” *OpenSecrets*, Center for Responsive Politics, 7 Nov. 2019, <https://www.opensecrets.org/dark-money/process>.

78. Ibid.

79. Ibid.

80. Ibid.

81. “Dark Money Basics.” *OpenSecrets*, Center for Responsive Politics, 7 Nov. 2019, <https://www.opensecrets.org/dark-money/basics>.

82. Vandewalker, Ian. “Outside Spending and Dark Money in Toss-Up Senate Races: Pre-Election Update.” *Brennan Center for Justice*, 3 Nov. 2014, <https://www.brennancenter.org/our-work/research-reports/outside-spending-and-dark-money-toss-senate-races-pre-election-update>.

83. Ibid.

84. “Dark Money Basics.” *OpenSecrets*, Center for Responsive Politics, 7 Nov. 2019, <https://www.opensecrets.org/dark-money/basics>.

85. Ibid.

86. Ibid.

87. “Whitehouse Introduces Disclose Act to Restore Americans’ Trust in Democracy.” *U.S. Senator Sheldon Whitehouse of Rhode Island website*, 11 Apr. 2019, <https://www.whitehouse.senate.gov/news/release/whitehouse-introduces-disclose-act-to-restore-americans-trust-in-democracy>.

As demonstrated in the evolution of campaign finance law in the U.S., weak enforcement has hindered effective regulation.

organizations spending money in elections, including super PACs and nonprofit groups, to disclose donors who have contributed at least \$10,000 during an election cycle.⁸⁸ The bill also includes provisions to target dark money groups, including regulations intended to impede the use of shell corporations to obscure donors. The Act also expands the existing “Stand by Your Ad” provision by requiring corporations, unions, and other organizations funding political advertising to name their top five funders at the end of television ads.⁸⁹

States also have the power to require that all groups engaged in political spending in state races disclose their donors.⁹⁰ States in which such requirements already exist demonstrate that this approach is effective. For example, nonprofits in California that have been associated with dark money must disclose all donors that contribute funds to their election efforts.⁹¹ Following this change, the state has had a much smaller gap between the amount of outside spending and the amount of that spending that is reported.⁹²

In today’s social media environment, it is crucial that federal and state regulations require the disclosure of donors for digital political advertising.⁹³ The share of political spending allocated

to advertising on digital and online platforms has increased over the past two presidential elections and is expected to comprise roughly a quarter of all political advertising spending in the 2020 election, up from about 14 percent in 2016.⁹⁴

In addition to improving transparency and disclosure, there are other actions that can close loopholes for candidates and officeholders. While super PACs are required to operate independently from candidates or parties, several loopholes exist that allow these committees to coordinate with candidates and parties in effect.⁹⁵ Candidates coordinate with super PACS by helping to fundraise, conduct polling, and organize events with and for these groups.⁹⁶ Reforms should prohibit candidate fundraising for outside groups.⁹⁷ Such reforms have been proposed in federal legislation, namely the Stop Super PAC-Candidate Coordination Act introduced in the House, and state and city governments have imposed their own regulations on fundraising coordination.⁹⁸

Because dark money groups do not have to disclose their donors, they can work in direct concert with elected officials. Therefore, to prevent the role of dark money in both influencing and benefitting elected officials, action at the federal and state levels is needed to require these groups to disclose all major donors.⁹⁹ New York City has already enacted this requirement for nonprofits controlled by elected officials and has set a limit on contributions from individuals with economic interests before the elected official.¹⁰⁰

As demonstrated in the evolution of campaign finance law in the U.S., weak enforcement has hindered effective regulation. As the agency responsible for overseeing campaign finance, the FEC has a key role in regulation. However, due to issues including

88. Ibid.

89. Ibid.

90. Weiser, Wendy, and Alicia Bannon. *Democracy: An Election Agenda for Candidates, Activists*. 2018.

91. Ibid.

92. Ibid.

93. Weiser, Wendy, and Alicia Bannon. *Democracy: An Election Agenda for Candidates, Activists*. 2018.

94. Glazer, Emily, and Jeff Horwitz. “Facebook Curbs Incentives to Sell Political Ads Ahead of 2020 Election.” *The Wall Street Journal*, 23 May 2019, <https://www.wsj.com/articles/facebook-ends-commissions-for-political-ad-sales-11558603803>.

95. Ibid.

96. Ibid.

97. Ibid.

98. These states and municipalities include Connecticut, California, and Minnesota as well as Philadelphia and Santa Fe. See Ibid.

99. Ibid.

100. Ibid.

political stalemates, lack of leadership, and low resources, the FEC has been limited in its capacity to enforce legislation.¹⁰¹ In its 2018 agenda for fixing American elections, the Brennan Center for Justice proposed the following reforms to the FEC to address these issues:¹⁰²

- Establish and maintain an odd number of commissioners, one or more of whom is required to be registered as an independent.
- Authorize the Commission’s career staff to investigate alleged violations, and expand the Commission’s authority in enforcement.
- Appoint one of the commissioners to serve as chair and as its chief administrative officer for a fixed term of four to six years, with sole authority to “hire the staff director and other senior administrative personnel, formulate budget requests to Congress, and manage the agency’s day-to-day operations.”
- Increase funding to enable the FEC to fulfill its compliance and enforcement responsibilities and to maintain information technology to collect and disseminate data on campaign finance disclosures.

Even though the Supreme Court has established that campaign finance regulation to promote “equalization” is unjustified under the First Amendment, there are nonetheless pathways to help level the playing field. In particular, voluntary public financing allows citizens a greater role in funding elections and is legally permissible under *Citizens United* and other Supreme Court decisions.¹⁰³ Examples of existing public financing mechanisms

include the following:

- Matching contributions, in which small donations are provided with a multiple match of public funds, as exemplified in New York City¹⁰⁴
- Voucher systems, where citizens receive certain amounts in public funds they can direct to their preferred candidates¹⁰⁵
- Tax credits for small campaign donations¹⁰⁶

While prominent megadonors are often from the U.S., the outsized role of money in politics is exacerbated by the influence of foreign spending.¹⁰⁷ Many of the proposals to reform money in politics would target both domestic and foreign actors. For example, the recommended regulations to increase transparency in online advertising would curb the ability of foreign individuals and entities to influence the American electorate.¹⁰⁸ Indeed, legislation proposed at the federal level includes both comprehensive measures to regulate online advertising and provisions specifically intended to limit foreign influence. In particular, the Honest Ads Act would require sellers of all forms of advertising to make “reasonable efforts” to prevent foreign nationals from purchasing political advertising.¹⁰⁹

No reforms would be complete without addressing the extreme infusion of money due to the Supreme Court’s ruling in *Citizens United*. Since that ruling in 2010, 20 states and over 800 local governments have enacted legislation requesting Congress to pass a constitutional amendment that would overturn the decision.¹¹⁰ Several forms of the constitutional amendment have been introduced in Congress in the last decade, including the Democracy for All Amendment, most recently reintroduced in

101. Ibid. In addition to its own challenges, these issues also apply to the IRS and its capacity for regulating 501(c)(4)s in particular. For example, see Martinez, Benjamin. “Nearly 10,000 501c4s Failed to Meet Reporting Rules, Says US Treasury.” *Nonprofit Quarterly*, 14 Jan. 2020, <https://nonprofitquarterly.org/nearly-10000-501c4s-failed-to-meet-reporting-rules-says-us-treasury/>.

102. Ibid.

103. Ibid.; “Reform Money in Politics.” *Brennan Center for Justice*, 7 Nov. 2019, <https://www.brennancenter.org/issues/reform-money-politics>.

104. Ibid.

105. “Public Campaign Financing.” *Brennan Center for Justice*, 7 Nov. 2019, <https://www.brennancenter.org/issues/reform-money-politics/public-campaign-financing>.

106. Ibid.

107. “Reform Money in Politics.” *Brennan Center for Justice*, 7 Nov. 2019, <https://www.brennancenter.org/issues/reform-money-politics>.

108. Weiser, Wendy, and Alicia Bannon. *Democracy: An Election Agenda for Candidates, Activists*, pg. 17, 2018.

109. Ibid.

110. “Citizens United & Amending the U.S. Constitution.” *Common Cause*, <https://www.commoncause.org/our-work/money-influence/campaign-finance/citizens-united-amending-the-u-s-constitution/>; “Democracy for All.” *U.S. Senator Tom Udall of New Mexico website*, <https://www.tomudall.senate.gov/imo/media/doc/Democracy%20For%20All%20Onepager.pdf>.

2019.¹¹¹ The amendment would include in the Constitution the following provisions:¹¹²

- “Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.”
- “Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.”

While there is much that can be done to reform money in politics within the current system, the Supreme Court’s constitutional rulings have hamstrung Congress’ ability to curtail the influence of megadonors and return the voice to the people. A constitutional amendment granting the legislature the right to regulate the vast amounts of cash perverting our democracy is a necessary first step towards that goal.

HOW TO REIMAGINE RIGHTS AND RESPONSIBILITIES:

- **REQUIRE DISCLOSURE OF POLITICAL FUNDING AND SPENDING.** Require full transparency and disclosure of all political fundraising and spending in federal and state elections by candidates, political parties, political action committees, and “dark money groups.”
- **AUTHORIZE CITIZEN FUNDING OF ELECTIONS.** Enact “clean election laws” for federal, state, and local elections through mechanisms such as voluntary public financing programs, including matching programs, voucher systems, and tax credits that amplify the contributions and power of small donors.
- **AMEND THE CONSTITUTION TO PERMIT REGULATION OF MONEY IN POLITICS.** Authorize the regulation of political funding and spending to eliminate the undue influence of money in the US political system by constitutional amendment overturning decisions of the Supreme Court interpreting the First Amendment to bar such regulation.

111. Slatton, Tori. “Democracy For All Amendment Reintroduced by Senators Udall and Shaheen.” *People for the American Way*, 30 Jul. 2019, <https://www.pfaw.org/blog-posts/democracy-for-all-amendment-reintroduced-by-senators-udall-and-shaheen/>.

112. United States, Congress, Senate. Democracy for All. 116th Congress, 1st session, Senate Joint Resolution. <https://www.tomudall.senate.gov/imo/media/doc/Democracy%20For%20All%20Amendment%20Final%20Bill%20Text.pdf>. See also “Harris, Feinstein, Senate Democrats Introduce Constitutional Amendment to Overturn Citizens United.” *U.S. Senator Kamala Harris of California website*, 24 Jul. 2019, <https://www.harris.senate.gov/news/press-releases/harris-feinstein-senate-democrats-introduce-constitutional-amendment-to-overturn-citizens-united>

Reimagining Rights & Responsibilities in the United States

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