Syllabus: Campaign Finance Reform

Money is the mother’s milk of politics.
– Jesse Unruh [1960s]¹

There are two things that are important in politics. The first is money... I can’t remember what the second thing is.
– Mark Hanna, 1895

[I]t was much later, and many ages after this, that buying and selling crept in at their elections, and money became an ingredient in the public suffrages.
– Plutarch, 75 C.E.

Elections cost money. Candidates have spent money running for public office since the beginning of the Republic (back then, candidates – including George Washington – routinely distributed hard liquor as a way of attracting support). In 2008, Barack Obama spent $750 million on his presidential campaign, and the total amount spent on all federal campaigns (House, Senate, Presidential) was close to $3 billion. With few exceptions, candidates obtain the bulk of this money from private sources: individuals, specialized political organizations, political parties, and in some cases corporations and labor unions. The connections between private money and the coercive power of government raise questions about how public officials make decisions. The main questions are simple: do officials give preferential treatment to those who give campaign funds? Can campaign contributors “purchase” legislation or a favorable regulatory decision? To campaign finance reformers, the answer is so obvious as to barely merit discussion; the equally obvious response is to limit what certain groups or individuals can contribute to candidates spend on elections. Others, however, argue that spending or donating money to support a candidate is no different than speaking out in favor of that candidate, and hence should be afforded the highest levels of constitutional protection. Efforts to prohibit certain kinds of speech are no different than dictating who can say what, and when. What values are at stake here? Which should take precedence? Should we value equality over liberty? Liberty over equality?

The issue has become more timely, and more controversial, in the wake of a landmark Supreme Court decision, Citizens United v. FEC, in which a split Court invalidated restrictions on independent spending (meaning that the spending is done without coordinating with any candidate campaign), even permitting corporate and union spending (though not contributions to candidates). Critics of the decision – and there were many – declared the end of democracy as we know it, and a new (and sad) era of unlimited influence of special interests. Defenders of the decision – and there were many – argued that if individuals have the right to spend unlimited amounts of their own money on independent efforts (and they do), then those rights should not disappear just because people exercise that right in a group.

In this course we will investigate in depth the questions behind campaign finance reform efforts. We will examine the philosophical rationale for campaign finance regulations, and the history of contemporary regulatory frameworks that govern campaign finance at the federal and state levels. We will analyze the many court cases that have refined the scope of permissible regulations, and the

¹ Possibly apocryphal; this quote has been attributed to a number of people.
evolution of new candidate and interest groups strategies that eroded the impact of the 1970s reforms. We will evaluate the impact of the Bipartisan Campaign Reform Act of 2002 (or BCRA), study how candidates, interest groups, and parties have adapted to this latest round of reform, and look into recent court decisions that have carved out exceptions to the regulatory framework. We will pay especially close attention to two recent Supreme Court decisions that have dramatically scaled back the permissible scope of governmental regulatory efforts [Federal Election Commission v. Wisconsin Right To Life 551 U.S. 449 (2007) and Citizens United v. Federal Election Commission 588 U.S. 50 (2010)].

We will also investigate state-level reforms (as well as comparative examples from other countries), focusing on the effects of public financing, and consider the question of whether recent technological developments will eventually render moot the current regulatory paradigm.

Much of the course readings are from the following books, available for purchase at the University Bookstore.


A significant amount of the reading will come from online sources, or articles that I will make available on the course website. Keep in mind that some of the reading will be difficult, and the overall load is on the heavy side. Law review articles and court decisions are not the easiest things to get through, and you will have an especially hard time if you let it pile up.

Requirements: Your grade will be based on a combination of a midterm on March 13th (worth 35%) a take home final exam due on Friday, May 18th (worth 45%) and section attendance and participation (worth 20%, with one short paper assigned during the week of February 14th). Please check your calendars and clear them now, as I do not give makeup exams.

**Topic Number** | Basics: Initial Thoughts About Elections, Political Communications, and the Role of Campaign Spending
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2 | Where we are (actually, were): Campaign Finance in the 2008 Elections
| Corrado and Magelby, Chs. 3-5

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2 Exceptions to this rule include documented involvement in an officially recognized University athletic or academic organization that has an out-of-town activity scheduled, or a documented and unanticipated family or medical emergency. Nonrefundable plane tickets do not fall into these categories.
3 Competing Visions of Politics: Equality, Influence, and Fairness
Samples, *The Fallacy of Campaign Finance Reform*, introduction and chapters 1-2
Jeffrey Milyo, *Campaign Finance Red Tape: Strangling Free Speech and Political Debate* (Institute for Justice, October 2007)
Lessig, chapters 1-8.

4 Campaign Finance Through History to the Current Regime: Adaptation and Response
La Raja, chapters 1-3
Perry Belmont, “Publicity of Election Expenditures,” *North American Review* (February 1905)
Louise Overacker, “Campaign Finance in the Presidential Election of 1940,” *American Political Science Review* 35:701-727 (No. 4, August 1941)
Corrado and Magelby, ch. 1

5 Legalized Bribery or Free Speech? The Constitutional Boundaries and Practical Problems
Corrado and Magelby, ch. 2
Lessig, chs. 9-14

6 Post Buckley Jurisprudence
*Federal Election Commission v. Furgatch* 807 F. 2d 857 (9th Circuit, 1987)

7 Adaptation and Response: Soft Money and Issue Ads
Trevor Potter, “Issue Advocacy and Express Advocacy,” in *Campaign Finance Reform: A Sourcebook* (on web site)

8 BCRA and McConnell v. FEC

9 Adaptation, Round $e^{\pi \sum n+1} \frac{\partial^2 X}{\partial y^T} :$ The Impact of BCRA
Corrado and Magelby, ch. 2
La Raja, chapters 4-7
Corrado and Magelby, chs. 6,7
Recent State-level reforms


Steven M. Levin, Keeping it Clean: Public Financing in American Elections (Center for Governmental Studies, 2006)

The Supreme Court’s New Attitude: WRTL, Citizens United and the Future of Regulation

Hillary: The Movie


Unorthodox Reform Efforts, and Deregulation
Samples, The Fallacy of Campaign Finance Reform, chs. 3-9
Lessig, chapters 15-21 and conclusion

Can reform keep up?
Richard L. Hasen, “Political Equality, the Internet, and Campaign Finance Regulation,” Forum 6 (No. 1, 2008)


Pew Research Center, Internet’s Broader Role in Campaign 2008 (January 11, 2008)
Corrado and Magelby, ch. 8