Political Science 466
Professor Mayer
Office Hours: Wed, 2-3PM or by appt.

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 over $5 billion. In 2012, Obama and Romney each spent over $1 billion, and total spending on federal elections exceeded $6 billion.² State and local races added a few billion more. Federal candidates obtain nearly all 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 favorable regulatory or judicial decisions? Are regular people frozen out of the political process if they lack the funds to contribute? To run for office? Is our system of funding elections compatible with our notions of democracy, individual freedom, participation, and equality?

To campaign finance reformers, the answers are so obvious as to barely merit discussion; the equally obvious response is to regulate the campaign finance system to limit the amount that individuals or groups can contribute to candidates, prohibiting certain kinds of contributions and spending, restrict what candidates can spend on elections, and provide alternative sources of funding. 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?

¹ Possibly apocryphal; this quote has been attributed to a number of people.
² The amount spent on the presidential election in 2012 was less than the amount spent in 2008, because there were fewer candidates. In 2008, there were 22 major party candidates for the nominations (10 Democratic, 12 Republican) and 6 who received delegate votes (Obama, Clinton, McCain, Romney, Paul, and Huckabee). In 2012, there were 13 candidates (1 Democratic and 12 Republican), and 5 who received delegates (Obama, Romney, Santorum, Paul, and Gingrich).
The issue has become more timely and controversial in the wake of a landmark Supreme Court decision, *Citizens United v. FEC*, in which a split Court invalidated restrictions on independent spending by corporations (meaning that the spending is done without coordinating with any candidate campaign). 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 combination with some other federal court decisions, individuals, corporations, and labor unions are now free to contribute unlimited amounts of money to organizations which then make campaign expenditures.

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 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 an in class midterm on February 26th (worth 35%), a take home final exam due on May 13th (worth 45%) and section attendance and participation (worth 20%, with one short paper assigned during the week of April 5th). Please check your calendars and clear them now, as I do not give makeup exams.³

³ Exceptions to this rule include documented involvement in an officially recognized University academic or athletic 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.
One feature of the class may be a surprise: lectures are a connectivity-free zone. You will have to go off the grid during class: no phones, no texting, no email, no internet, no Facebook/ESPN/World of Warcraft, etc. This may be difficult at first – and your friends may worry that you’ve fallen down a well when you don’t respond to messages within 30 seconds – but I promise that you will not, in fact, die from disconnecting, though it may feel that way initially. You may also come to realize that you can’t pay attention in class when you are online, and that multitasking is a myth. The TAs will monitor this.

**Topic Number**

1. **Basics: Initial Thoughts About Elections, Political Communications, and the Role of Campaign Spending**

2. **Competing Visions of Politics: Equality, Influence, and Fairness**
   - Samples, *The Fallacy of Campaign Finance Reform*, introduction and chapters 1-6
   - Lessig, chapters 1-8
   - Youn, chapters 8-9

3. **Campaign Finance Through History to the Current Regime: Adaptation and Response**
   - La Raja, chapters 1-3
   - Samples, chapter 7
   - Perry Belmont, “Publicity of Election Expenditures,” *North American Review* (February 1905)

4. **Legalized Bribery or Free Speech? The Constitutional Boundaries and Practical Problems**
   - Youn, chapters 1-4

5. **The Buckley Regime**
   - Youn, chapter 5
BCRA and McConnell v. FEC*
Samples, chapters 6, 8
La Raja, chapters 4-7
Campaigns and Elections 20:22-27 (May 1999)

State-level and Comparative reforms

The Supreme Court’s New Attitude: WRT and Citizens United

Assessing the Impact of Citizens United, and the Future of Regulation
Youn, chapters 6,7,10

Unorthodox Reform Efforts, and Deregulation*
Samples, The Fallacy of Campaign Finance Reform, chapter 9
Youn, chapter 11
Lessig, chapters 15-21 and conclusion
Richard L. Hasen, “Political Equality, the Internet, and Campaign Finance Regulation,”
Forum 6 (No. 1, 2008)