

Analysis of the Historical Development and Critical Importance of US Election Campaign Finance Regulation

Yiming Xu^{1,a,*}

¹*School of Slavonic and East European Studies, University College London, London, UK, WC1H 0BW*

a. yjmsxuh@ucl.ac.uk

**corresponding author*

Abstract: “Election”, one of the fundamental representations of democracy is changing due to the flood of money running into campaign finance; this essay trying to identify the historical development and impact of US campaign regulation on the virtues of democracy. The general trends across academia spilted between libertarian and egalitarian perspectives in debating the fundamental tradeoff between freedom and equality by looking at the logic behind the changing regulation. This essay takes an inclusive approach reviewing the various fields that conduct campaign finance research while providing a historical overview of the US election campaign regulations and their critical impact on American political society.

Keywords: Elections, Money in politics, Political equality, Egalitarian, Libertarian

1. Introduction

Elections held in representative democracy in the US are designed for Americans despite their race, gender, social and financial status, an equal chance of voting for the next president, thus providing an opening for critics of the social system while protecting the rights of disadvantaged minority groups[1]. As money spent on campaign financing had become increasingly drastic and, contributions from cooperation were not limited; the democracy prompted in the US is in danger of becoming a cooperative plutocracy. This essay takes an inclusive approach while reviewing the various fields that conduct campaign finance research while providing a historical overview of the US election campaign regulations and their critical impact on American political society. The general trends across academia spilted between libertarian and egalitarian perspectives in debating the fundamental tradeoff between freedom and equality. This essay aims to look at the impact and logic behind the changing regulation.

2. Historical Development of US Campaign Finance Regulation

Untangling the intricate web of the super-influential 1%'s impact on democracy is a tremendous challenge due to America's opaque nature of political finance; alternatively, as former president Barack Obama put it, the "unlimited, untraceable spending[...] hiding behind non-profit front groups and public relations agencies" [2]. The legal framework of the US election campaign regulation is highly complex. The process of pursuing political integrity and equality started even before the US

gained independence from Great Britain. Nevertheless, the most drastic and effective reform took place after the watergate scandal in 1972; It brought an end to a president and rocked the American government to its core[3]. The Watergate incident exposed the American political funding system's hidden secrets; Nixon's campaign spent a record-breaking \$67 million in 1972, much of which the Administration opted not to reveal publicly. According to the Watergate investigation, Nixon received \$850,000 in undeclared campaign contributions[3]. Some of the most well-known enterprises in the nation were among the businesses that made unlawful payments. It was also presented as campaign financing laws' defining moment. Nixon resigned forty years ago, but "Follow the money" is still a helpful tool for anyone trying to understand the critical importance of American election law. The subsequent impact of the Watergate scandal led to the creation of the Federal election campaign act. In a 1973 Harris Poll, the majority of Americans—nearly 90%—thought that campaign expenditure was excessive and that contribution caps should be implemented, making reform support irresistible in Congress[3]. Congress then voted 355 to 48 on August 8, 1974, to adopt the Federal Election Campaign Act(FECA) modifications, the day before Nixon announced his resignation as president. Later, President Gerald Ford reluctantly signed the FECA of 1971, making this momentum change in US election finance history. The FECA amendments of 1974 changed the landscape of American campaign finance law. It imposed a \$1,000 per election cap on contributions to federal candidates; a \$25,000 total aggregate biennial cap on contributions from one donor to all federal candidates and committees; a \$1,000 cap on independent campaign expenditures per person; a requirement for public disclosure of campaign contribution information; and the creation of a presidential public financing system[3]. These changes despite being supported by the public still received criticism from academia. Reform's call did not meet with widespread approval. The proposed changes, according to detractors in Congress and academics, would prevent Congressional challengers from raising enough money for their campaigns and violate the First Amendment. The proposed spending restriction, for instance, according to Yale Law Professor Ralph K. Winter the FRCA sets a ceiling on the political activities in which American individuals can engage[4]. As "an unambiguous restriction on political freedom" that "establishes a dangerous precedent" of government regulation of freedom of expression and association, he also denounced donation restrictions. In the marketplace of ideas, Winter declared, "there is no room for price regulations." Senator James Buckley of New York was one of the Senate's primary opponents of the 1974 changes. According to the Republican senator, the changes should be renamed the "Incumbent Protection Act of 1974" since they were an act of "cynicism." According to Buckley, who foresaw the effects of the limits in actuality, the artificially low expenditure caps are insufficient and will prevent competitors from getting started in House, Senate, and even presidential elections. The Supreme Court ruled that restrictions on political campaign donations and their use do, in fact, impede the First Amendment rights to free speech and association[3]. The government's interest in thwarting corruption and the appearance of improper behaviour, the Court further decided, justifies donation restrictions. Quid pro quo agreements, in which contributors provide money to elected officials in exchange for political favours, must be outlawed to protect the integrity of the electoral process. The Court, however, overturned FECA's spending restrictions on the grounds that they constituted direct speech restrictions in violation of the First Amendment. According to Issacharoff and Karlan[5], the Court's judgment in Buckley has drawn criticism for the separation of donations and expenditures and for emphasizing the importance of money in politics. Before the momentum case of citizen united VS FEC, the Court had broadened the definition of corruption, including "undue influence on an officeholder's judgment, and the appearance of such influence," in addition to cash-for-vote transactions in the Bipartisan Campaign Reform Act (BCRA) case in 2002. However, in Citizens United v. FEC, the Court significantly reduced the scope of its definition of corruption; in Citizens United, most of the

Court invalidated BCRA restrictions that barred unions and corporations from making independent expenditures for political communications[6]. The Court determined that avoiding quid pro quo corruption or the appearance of it is the only governmental interest powerful enough to outweigh First Amendment concerns[6]. Despite the common view that pinpointed the citizen united case as the beginning of the skyrocketing campaign costs era, however, the 1974 amendments were never able to stop the flow of money into politics. The Supreme Court's Buckley decision ensured that the money floodgates would remain open in American electoral campaigns by removing expenditure limitations.

3. Libertarian & Egalitarian Perspective

Two primary perspectives on whether or not the government should restrict campaign spending and contributions are the libertarian and the egalitarian perspectives[6]. United citizens took this libertarian perspective; it stated that these restrictions are restrictions on expression that is protected by the constitution. People spread ideas by making financial contributions to political parties and politicians who share their political beliefs or by spending money on political advertising. The idea that money is comparable to speech, however, has also stirred some debate[7]. Free speech is important for democracy; in fact, some would argue that it is necessary for democratic government. Due to the right to free speech, citizens may criticize the government without fear of reprisals. Democracy and freedom are in danger if the government has the power to censor expression. The libertarian viewpoint holds that because free expression is constitutionally protected, there is a presumption against the state restricting political donations and expenditures[6]. Nevertheless, in reality, the outcome of citizen united's court decision did not pave the way for diversity and freedom in the market of ideas as it suggested. As campaign finance regulations helped the incumbent to stay in power and transfer the burden on challengers of the current political norm. Without spending caps, incumbents had a significant and expanding fundraising advantage. Aside from having a larger network of supporters, incumbents also benefit from having a free staff, free mailings to their supporters, name recognition, and media attention. Smith made the case that any limitations on contributions and spending should be removed because they interfere with citizens' rights to free speech and political power[8]. He said that there is scant proof that political donations and expenditures taint the legislative process. Nevertheless, political equality still can not be fulfilled even if donation and expenditure caps are removed, as due to the relative individualism of the candidate-selection process and its reliance on name recognition and personal brand, it has been largely manipulated by the top 1% through substantial campaign donations. The majority of politicians who rise above the local level in states of any size and significance rely heavily on the same people who run businesses and participate in policy groups as major donors and fund-raisers[1]. The engagement of wealthy donors and fund-raisers appears to be particularly essential in deciding whether candidates join primaries and do well in them given that name recognition and image tend to be even more significant at this point than in general elections[1].

The egalitarian perspective, in contrast, believes that in some circumstances, the state must regulate speech in order to stop the wealthiest from monopolizing political discourse. The cost of spreading different points of view might lead the wealthiest people to control all communication channels. Concentrations of private power might prevent others with less voice from speaking, implying that the marketplace of ideas would not represent all viewpoints and speakers[6]. When people with more private wealth are allowed to utilize their advantages to steer the direction of public discourse, according to Rawls, the rights defended by the principle of participation "lose much of their purpose"[9]. According to Rawls' theory, the affluent would gradually have more influence over how laws are developed[9]. In light of this, it is likely that the wealthy will "gain a predominate weight in determining societal matters, particularly in connection to those subjects

upon which they typically agree, that is, regarding those things that sustain their favoured circumstances." An elegant solution proposed by Fiss to this seemingly intractable trade-off between liberty and equality is to broaden the definition of the word liberty[10]. The control of political contributions restricts the freedom of expression based on the first definition of liberty. According to the second definition, campaign money laws defend the right to free expression. Because unrestricted speech has a stifling impact, restrictions enforced by the government can protect free speech in the name of liberty and equality. Fiss claimed that this approach had the benefit of placing the issue of speech regulation inside a common framework. The common belief that the state is opposed to free expression is narrow [10]. The state had to restrict private wealth because it constituted a danger to the right to free expression. Thus, the state possesses a critical role in defending free expression against private power nexuses [10]. One of the factors that made money become such a decisive factor in the US election is partly due to America's political structure. As a two-party system does not produce parties that define distinct ideologies and policies; competing candidates tend to muddle their differences in order to win over the middle-class voters. As a result, candidates frequently give more weight to personality traits than to policy preferences. It may even result in cooperation between the two parties to avoid specific problems or prevent rivalry in some regions. Furthermore, evidence suggests that a two-party system deters voters by ensuring that those who make up even a tiny minority—49 percent—get no representation in return for their participation[1]. There is a lot of empirical research on campaign funding. While some research concentrate on the influence of campaign financing on legislative outcomes, some studies are more specifically interested in the impact of campaign finance on election outcomes. However, most of them failed to find a direct connection between a campaign contribution and political influence. The reason for that is partly due to the nature of politics; the distinction between responsiveness and corruption is difficult to distinguish[6]. Especially during the process of conveyance of policy, personal interest can be transformed and embellished into public needs that do fit into the democratic agenda. In order to prevent this political elitism and the impact of money in politics, scholars have brought the ideas of electoral exceptionalism, trying to avoid money impacting democracy; it implies that elections ought to be considered a separate area of democratic action[6]. Using this strategy, it would be acceptable for the electoral sphere to have different regulations than other First Amendment-protected domains. In fact, the current campaign finance laws demand that a distinction be made between expenditure on elections and other political spending. Political speech and campaign speech should be separated since elections are a component of the legislative process. The Court has already acknowledged other contexts, like speech in a courtroom or a school, where the First Amendment does not apply[11]. Nevertheless, electoral exceptionalism is still seen as a form of government intervention that disobeys the principle of liberalism[12].

4. Conclusion

The fundamental argument over US's campaign finance regulation is the pursuit of a balance between equality and liberty, the two virtue of democracy. Liberals believe that in order to protect the right to free expression, government intervention should be limited. The views of the wealthy would, however, dominate public conversation, and the opinions of the less well-off would be drowned out, according to this. Money in politics has always been controversial, and the constitution did not guide how the conflict should be resolved. According to anti-plutocracy researchers, a person's ability to vote should not be influenced by their wealth, in contrast to the inevitability of social equality that differs depending on personal characteristics, wealth-based political inequality may be avoided by regulation and enforcement. Nevertheless, achieving this political equality without damaging freedom of speech still remains unresolvable. Therefore the

central debate around US electoral campaign finance regulation is the tradeoff between freedom of speech and political equality; whether cooperations should be given the same first amendment right as other American citizens. Restrictions on campaign financing may unintentionally result in the concentration of political power within an even smaller group of elites. Even though, the financial factor is not the sole contributor to political inequality; other non-financial factors also raise concern, money in politics had raised increasing concern both across academia and the general public, and democracy is in a constantly changing status, as the study of campaign finance. Debates and protests around the matter of money in politics had been ever more controversial and changes in regulations may occur in the forthcoming future.

References

- [1] Domhoff, G., 2010. *Who rules America?*. Boston: McGraw-Hill.
- [2] LSE Review of Books. 2022. Book Review: *Dark Money: The Hidden History of the Billionaires behind the Rise of the Radical Right* by Jane Mayer. [online] Available at: <<https://blogs.lse.ac.uk/lsereviewofbooks/2017/03/20/book-review-dark-money-the-hidden-history-of-the-billionaires-behind-the-rise-of-the-radical-right-by-jane-mayer/>> [Accessed 28 July 2022].
- [3] Gaughan, Anthony J., 2016. *The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform* (December 1, 2016). 77 *Ohio State Law Journal* 791
- [4] Winter, R., 1974. *Watergate and the law*.
- [5] Pamela S. Karlan and Samuel Issacharoff, 1999. *The Hydraulics of Campaign Finance Reform*, 77 *Texas Law Review*
- [6] Dawood, Y., 2015. *Campaign Finance and American Democracy*. *Annual Review of Political Science*, 18(1), pp.329-348.
- [7] Samples, J. and McDonald, M., 2006. *The Marketplace of Democracy*. Washington, D.C.: Cato Institute.
- [8] Smith B. 2001., *Unfree Speech: The Folly of Campaign Finance Reform*. Princeton: Princeton Univ. Press.
- [9] Rawls, J., 1999. *A theory of justice*. Oxford: Oxford University Press.
- [10] Fiss, O., 1996. *The irony of free speech*. Cambridge, Mass.: Harvard University Press.
- [11] Stone, G. 2001., "Electoral Exceptionalism and the First Amendment: A Road Paved with Good Intentions," 35 *New York University Review of Law and Social Change* 665
- [12] Wolff, J., 2016. *An introduction to political philosophy*.