

THE CASE FOR CAMPAIGN FINANCE REFORM IN THE UNITED STATES

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### ABSTRACT

Campaign finance laws in the United States have changed dramatically over the last thirty years. These changes are largely due to laws passed by Congress and decisions from the Supreme Court. Two major laws that determined the course of the laws were the Federal Election Campaign Act of 1971, and the Bipartisan Campaign Reform Act of 2002. These laws outline how campaigns were required to run. In addition to laws passed by Congress, decisions from the Supreme Court have dramatically changed the scope of electioneering. *Buckley v Valeo*, decided in 1976, and *Citizens United v FEC*, decided in 2010, both brought major changes to elections, ranging from disclosure requirements to the creation of SuperPACs. These decisions, paired with the laws passed by Congress set the stage for a campaigning system that many see as in dire need of reform.

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## I. Introduction

In 1986, the average cost of a successful House of Representatives campaign was \$359,577, and the cost of a successful Senate campaign was \$3,067,559. In 2012, the cost of a successful House campaign cost \$1,596,953, while a successful 2012 Senate campaign cost \$10,351,556 (*"Vital Statistics on Congress" 2013*). The change in election financing is due largely to the 2010 Supreme Court decision, *Citizens United v. FEC*. The *Citizens United* ruling held that the "federal government may not ban independent political spending by corporations in candidate elections, although it remains illegal for corporations to donate to candidates from their corporate treasuries" (Georgetown University. n.d.). This evolution of campaign finance laws, many believe, has left the United States in a dangerous position where the financial power in the electoral process has been shifted towards corporations and super PACs (Smith, 2006).

Congressional response to the *Citizens United* decision has been varied, from proposed constitutional amendments to legislation that would fill the gaps in the decision. This paper will examine what has happened to campaign finance laws in recent year, what can be done to address the changes, and where the United States is likely headed with such reforms.

As a direct result of *Citizens United* there has been a re-energized movement in the United States that is calling for an overhaul of the campaign finance system, known as campaign finance reform. Campaign finance reform has been around since the early 1900's, when, "under the leadership of President Theodore Roosevelt, who repeatedly called for

restrictions on corporate spending in connection with federal elections [Congress acted in 1907 to ban political giving in such elections by any corporation](#) ("United States Federal Election Law" 3). [A report from the University of Denver on campaign finance found "A broad array of political entities with the ability to raise and spend unlimited funds now occupy the electoral playing field" \(University of Denver. 2013\) Campaign finance reform advocates point to reports like this one to illustrate the dangerous position elections are in in the United States.](#)

Campaign finance reform advocates point to David and Charles Koch when discussing why the United States needs [to prevent money from playing an outsized role in the election process](#). The Kochs [are](#) two billionaire brothers who are extremely active in Republican politics, and who [have spent](#) large [portions](#) of their personal wealth, [sometimes](#) hundreds of millions of dollars, in electing [Republican candidates who support policy positions advocated by the Kochs](#). A recent PBS special on the brothers noted that their " ... political organization has budgeted a whopping \$889 million for the 2016 presidential campaign" ([Benac. 2015](#)). [According to the Center for Responsive Politics, in 2012, President Obama's re-election spending totaled \\$1.1 billion while Governor Romney's campaign spending equaled \\$1.2 billion \("2012 Presidential". 2013\). Looking at these figures, and seeing that two brothers are willing to spend almost \\$1 billion illustrates that the two men could, almost singlehandedly, fund a Presidential nominee's campaign.](#)

[Excess influence because of money has been a concern of good government advocates for decades. President Nixon's campaign activities, which involved corrupt practices, motivated Congress to act back in the 1970s. An article from 2000 in the New York Times exposed details of the corruption, when in 1971, dairy industry leaders met](#)

with White House officials to advocate for an increase in their government funding. In order to secure that funding, Nixon Administration officials told the leaders, "...they've got to put so much money directly at your disposal" referencing the President's re-election campaign (Luna, 39). The report then went on to note that, after the leaders met with Nixon officials, some "\$322,500 from dairy groups soon poured into Nixon campaign committees" (Luna, 40). This example illustrates why campaign finance reform advocates support reform, so that officials cannot blackmail or strong-arm their way to campaign donations.

Campaign finance reform advocates also note that the money donated to candidates is often from a small portion of the population. For example, a recent *New York Times* article noted that, "Fewer than four hundred families are responsible for almost half the money raised in the 2016 presidential campaign, a concentration of political donors that is unprecedented in the modern era" (Confessore 2015). This deep concentration of wealth shows just how much the elections process has changed as a direct result of cases like *Citizens United v. FEC*.

In this paper, there will be an explanation of what campaign finance laws are, a section discussing this history of Congress and campaign finance laws, and one regarding the Supreme Court's campaign finance decisions, and a section on the future of campaign finance reform. The paper will explain how the legislative process works, as well as how campaign finance reform can be achieved, if there is political will to do so.

In order to understand the necessity for campaign finance reform, it is important to note what the current laws are. By gaining understanding of where we have been, we will have a better idea of where to go. The history of campaign finance reform dates back to the

early parts of the 20<sup>th</sup> century. Although the need for reform was present back then, due to the decisions of the United States Supreme Court, the need for campaign finance reform is even greater today.

Congress has [the power to](#) change the campaign finance system by passing laws to alter the process. [When the Supreme Court decides, however, that those laws are unconstitutional, as it has in some campaign finance cases, Congress cannot merely re-pass legislation. But](#) there are a few different avenues it can utilize if it seeks to change the [way campaigns are conducted](#).

The United States Supreme Court is the judicial body tasked with determining the constitutionality of laws. Campaign finance decisions began to become more common after the decision in *Buckley v. Valeo* (1976), where the Court [upheld the constitutionality of limits on contributions to candidates for federal office, and disclosure and recordkeeping requirements but at the same time struck down the limitations on expenditures by candidates and their committees. \(FEC Litigation, 2015\). Even after the ruling,](#) Congress continued to try to regulate the flow of money in campaigns. [The Supreme Court responded with more decisions. The combined actions of the two branches have changed the nature of campaigning, and the impact of these decisions is evident today.](#)

Finally, with the next presidential election fast approaching, it is critical to examine the [prospects for action on](#) campaign finance reform. [As a look at the candidates will show, it is apparent that it is a highly partisan issue, with Democrats favoring reform, and Republicans generally opposed.](#) Equally as important as the presidential election are the various congressional and senatorial elections that will take place next year, as the members of Congress write the laws. Because the nature of campaign finance reform has

become such a partisan issue, it is important for advocates of campaign finance reform to pay attention to who gets elected, especially to the presidency. The President of the United States has the unique ability to serve as a champion for campaign finance reform, and many candidates are taking the opportunity to highlight their stances on reform in their campaigns.

Campaign finance reform is a critical step in maintaining democracy, as we know it today because the American people believe their elected officials should best represent them, and not just a conglomeration of corporations. [A Gallup poll from 2013 shows that 50% of Americans would support a law that establishes government funding of federal campaigns \(Saad, 2013\).](#) The founding fathers held the truth of government “of, by and for the people” to be crucial, and it is vital that we work to ensure that goal is kept for generations to come. If the American electorate continues to allow elections to be taken over by the richest among us, elections could permanently become a business: where he who has the most money, wins.

**Commented [EP1]:** You never talk about congressional elections again.

## II. Campaign Finance: History & Current Laws

[Dating to the 1970s, there has been concern over the role of money in politics.](#) An [incumbent](#) congressional candidate from 1974 would raise [an average of \\$40,925 \(“Vital Statistics on Congress” 3-3\).](#) In contrast, in her last House race, [incumbent](#) Representative Ann Kirkpatrick (AZ-01) raised over \$3 million ([FEC, “Candidate”](#)). [Advocates for reform believe that](#) the drastic change in funding for these races should serve as a warning signal for the future. If Congress does not [enact](#) bipartisan campaign finance [laws, elections may](#)



be bought and sold by the richest bidder, this could undermine American democracy and the principles our country was founded on.

Members of Congress understand the importance of campaign finance laws because they determine the rules governing members running for re-election, and because some members are concerned about the role of money in politics. According to a report by the Congressional Research Service (CRS), since the 93<sup>rd</sup> Congress (1973-1974), “... more than 1,000 campaign finance measures have been introduced” (Garrett, 6). Members of Congress have always had a vested interest in campaign finance laws, as they are the ones who are required to follow the laws during their campaigns. The Supreme Court has issued decisions in response to laws passed by Congress. There has been a back and forth between the Supreme Court and Congress on where the line is on money in campaigns, and the answer is still not completely clear.

Most modern campaign finance reform activity dates to the 1971 Federal Election Campaign Act or FECA. Congress passed FECA because many senators felt there was a need for an independent agency tasked with administering campaign finance disclosure laws (Mutch, 83). These disclosure laws include donor disclosure, as well as PAC donation disclosure requirements. FECA was amended in 1974 after there were allegations against the Nixon campaign for violating campaign regulations. The original bill and its later amendments set the regulations and rules for how elections must take place. Certain elements of FECA include: limits on donations to campaigns by individuals and groups, the establishment of the Federal Election Commission, and requiring all candidates report their donations. Since its passage in 1971, FECA has been challenged in the courts, and one

challenge resulted in the landmark Supreme Court decision, *Buckley v. Valeo* (Garrett, 4, 2014).

An additional cornerstone piece of campaign finance regulation legislation was the 2002 Bipartisan Campaign Reform Act, or BCRA. BCRA, also known as the McCain-Feingold Act, substantially changed campaign finance rules. BCRA established a whole new set of regulations to ensure campaigning was more of a leveled playing field. The law created new regulations on “soft money”, or non-regulated federal money, which is defined by the Congressional Research Service as, “... a term of art referring to funds generally believed to influence federal elections but not regulated under federal election law. Soft money stands in contrast to hard money. The latter is a term of art referring to funds that are generally subject to regulation under federal election law, such as restrictions on funding sources and contribution amounts.” (Garrett, 4, 2014) BCRA also created new regulations surrounding advertisements.

The law contained restrictions on issue advocacy, where parties interested in an election used media buys to promote their interpretation of how a candidate for office voted on a specific issue or

issues. For example, any advertisement for or against a candidate has a “paid for by” statement at the end; this was a direct result of BCRA. Generally, BCRA prohibited

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year <sup>1</sup>	Special Limits
Individual may give	\$2,600*	\$32,400*	\$10,000 (combined limit)	\$5,000	No limit
National Party Committee may give	\$5,000	No limit	No limit	\$5,000	\$45,400* to Senate candidate per campaign <sup>2</sup>
State, District & Local Party Committee may give	\$5,000 (combined limit)	No limit	No limit	\$5,000 (combined limit)	No limit
PAC (multicandidate) <sup>3</sup> may give	\$5,000	\$15,000	\$5,000 (combined limit)	\$5,000	No limit
PAC (not multicandidate) may give	\$2,600*	\$32,400*	\$10,000 (combined limit)	\$5,000	No limit
Authorized Campaign Committee may give	\$2,000 <sup>4</sup>	No limit	No limit	\$5,000	No limit

[unions and certain corporations from spending treasury funds for such “electioneering communications” \(Cantor. 2004\).](#) [BCRA also restricted](#) coordinated and independent expenditure committees, contribution limits and prohibitions, and disclaimers. The law set up a process for candidates who were independently wealthy and included limits they could on what they could contribute to their own campaigns. BCRA passed with substantial margins in both [chambers](#), 60– 40 in the Senate, and 240–189 in the House, as it was the result of bipartisan negotiations.

FECA and BCRA are the key elements structuring campaign finance laws today, along with a string of [Supreme Court decisions interpreting those laws](#).

All kinds of elections, from school board to presidency of the United States, are governed by campaign-finance regulations. For nonfederal elections, typically the states make the rules, and laws set forth by Congress govern federal elections. Campaign finance laws have many different variations across the United States. From municipal races such as school boards and legislative seats, the limits are much lower and the laws are drastically different from federal races.

The Federal Elections Commission lists 8 major laws on their website that candidates for federal office are required to follow: Consolidated and Further Continuing Appropriations Act, 2015, H.R. 83, Pub. Law. No. 113-483, Gabriella Miller Kids First Research Act, H.R. 2019, Pub. Law No. 113-94, H.R. 3487, Pub. Law No. 113-72, H.R. 6296, Pub. Law No. 110-433, The Honest Leadership and Open Government Act of 2007 (HLOGA), Section 721 of the 2006 Appropriations Act, Consolidated Appropriations Act of 2005, and the Bipartisan Campaign Reform Act of 2002 ([FEC. “Federal Campaign Finance Laws”. 2015](#)). These eight pieces of legislation, passed by both houses of Congress and

signed by Presidents of both parties, lay out the exact regulations that candidates and their campaigns are required to follow. By offering specific outlines for candidates, Congress and the Federal Elections Commission believed they had found a solution to the campaign finance problems they were dealing with such as large dollar donations and anonymous donations.

Candidates for federal office are required to submit various forms of reports to ensure they are following the laws. For example, every three months, all candidates are required to submit filing reports to the FEC outlining how much they raised in the quarter, as well as who they received contributions from. These reports are filed through a campaign's compliance department, which is in charge of ensuring the candidate is following all laws and regulations set forth by the FEC. While the FEC laws are critical, further complicating the issue for candidates are the recurring decisions of the Supreme Court [that occasionally change the requirements they operate under.](#)

### III. Supreme Court Decisions

One of the Supreme Court's primary duties is to determine the constitutionality of legislation, including campaign finance laws. Through decisions such as *Buckley v. Valeo* and *Citizens United v. FEC*, the Court determined whether or not donation limits violated the [First Amendment](#) of the [Constitution](#). *Buckley v. Valeo* was the first case in modern times when the Supreme Court discussed the issue of campaign finance reform. The [Court](#) heard arguments that claimed that limits on donations were unconstitutional, as the plaintiffs in the case claimed. When the Court issued its opinion in *Buckley*, it "upheld the contribution limitation provisions against the First Amendment challenge on the grounds

that they were appropriate legislative weapons against actual corruption..." (Durbin 42. 2002). According to a 2008 CRS Report, *Buckley* ensured that America did not create a "... 'free political marketplace', which is neither mandated by the First Amendment nor desirable, because...corruptive pressures undermine the integrity of political institutions" (Whitaker, 2008). This was a groundbreaking case as it was the first time the Court had roundly accepted campaign finance limitations under the First Amendment. *Buckley* was often cited as the most important Supreme Court case to deal with elections in modern history.

*Buckley v. Valeo* set the tone for future campaign finance rulings by the Supreme Court and lower courts. The case was brought before the court asking it to rule on the constitutionality of the Federal Election Campaign Act of 1971 (FECA) (*Buckley v. Valeo, 2015*). *Buckley* allowed limits to be placed on donations to campaigns because the Court saw no evidence of a First Amendment violation in doing so. The Court was split 7-2, with Chief Justice Burger voting in the minority. According to the opinion of the Court, the court found that there was no government interest involved in removing the limits from campaign donations (*Buckley v. Valeo, 2015*).

The *Buckley* case also addressed the legality of expenditures in campaigns. In the decision, the Court found that the governmental restriction of any expenditure, independent as well as those made by the candidate violated the First Amendment. In other words, while the Court felt there was a governmental interest in controlling how much a person could contribute to any one campaign, the majority did not believe there could be a cap placed on how much a candidate spent on her election, because that would fall afoul of the First Amendment.

The majority opinion found “The electorate’s increasing dependence on television, radio and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech” (Buckley v. Valeo, 1976.) *Buckley v. Valeo* is an important case because of its impact on individual donations to candidate limits, and because it allowed independent campaigns to spend what they choose. Buckley laid the groundwork for additional cases to come.

The Supreme Court entered the debate again in 2003 in *McConnell v. FEC*. The case explored whether or not the soft money ban that was enacted under the BCRA exceeded Congress’ authority to regulate elections under the First Amendment. In a 5-4 decision, the court upheld Congress’ authority to regulate and even ban such soft money contributions. This decision was seen as a blow to the conservative movement, as the plaintiff in the case was then-Minority Leader Mitch McConnell (R-KY), along with Senator John McCain (R-AZ), the NRA, the Republican National Committee, and others. But because soft money is often collected in small dollar donations, many see those donations as a democratic donor stronghold, and therefore saw this decision also as a blow to the left.

Next came *Citizens United v. FEC*, arguably the most prominent case regarding campaign finance regulation in the United States. Decided in 2010, the decision in *Citizens United* is seen by advocates of campaign finance reform as the largest roadblock to overhauling campaign finance laws. The decision overturned key elements of BCRA, and allowed for the creation of Independent Expenditure Committees (IEs) by businesses and unions. IEs are different than regular Political Action Committees (PAC), in that IEs are able to operate as “expressly advocating the election or defeat of a clearly identified candidate” (“Coordinated Communication” 2015) without direct involvement with a campaign.

"Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." Associate Justice Anthony M. Kennedy wrote for the majority (*Citizens United v. FEC*, 2010, 50).

IE's are not allowed to collude with or work with a candidate, party, or committee, but they are allowed to spend unlimited amounts of money independently to advocate for or against any candidate for federal office, any issue areas they desire, or any advertisement they choose to distribute. What the majority opinion held is that, in the sense of campaign donations, large dollar donations from CitiBank or the AFL-CIO are categorized as free speech, the same as a donation from Michael Sheridan. Many campaign finance reform advocates see the decision as allowing corporations and unions to be seen as people. Justice Stevens noted in his dissent, "Corporations help structure and facilitate the activities of human beings, to be sure, and their "personhood" often serves as a useful legal fiction. But they are not themselves members of "We the People" by whom and for whom our Constitution was established" (*Citizens United v. FEC* 76, 2010). Justice Steven's dissent also noted that, "In a democratic society, the longstanding consensus on the need to limit corporate campaign spending should outweigh the wooden application of judge-made rules" (*Citizens United v. FEC* 90, 2010).

Campaign finance reform advocates believe the *Citizens United* precedent could be dangerous because it has potentially no end, and they point to the 2012 election as proof. According to the Center for Responsive Politics, corporate donations, combined, equaled over \$960 million, out of a total spent of \$6 billion in 2012 (Center for Responsive Politics, 2013). These independent donations and contributions can be disbursed or spent in any

way that the benefactors choose. When the Supreme Court issued its opinion on the case, Americans knew the implications of this case would be vast; although many scholars doubt that the American people knew just how vast they would become. *Citizens United* allowed the richest Americans to have their voices amplified over the typical American because it permitted them to donate however much money they deemed appropriate.

Soon after the *Citizens United* decision, the US Court of Appeals for the District of Columbia held in *Speechnow.org v. Federal Election Commission (2010)* “...that contributions to political action committees (PACs) that make only independent expenditures [\(IE\)](#) cannot be limited” ([Garrett 5. 2014](#)). The implications and fallout from this case may be even more drastic than the two cases previously mentioned. In *Speechnow.org*, [the Court](#) allowed for the creation of “SuperPACs.” [A](#) SuperPAC is a committee than can receive unlimited amounts of money as long as the money is going to an IE. As long as the money is funneled into an IE, the Federal Elections Commission [has](#) very little regulatory power [over them](#).

With all of these decisions, some wonder what has not changed? According to a CRS report, the “federal ban on corporate and union treasury contributions [\[to campaigns themselves\]](#) the federal ban on soft money contributions to political parties, and some contribution limits still exist” ([Garrett 11-12. 2014](#)). Congress now faces key decisions about how [it can pass](#) campaign finance reform in the face of the court’s actions, if at all.

#### **IV. Congressional Options to Address Campaign Finance Reform**

Members of Congress, no matter whether they support reform or not, are affected by campaign finance laws. Due to the fact that they are the candidates who are bound by the FEC rules and regulations, they are the ones with the most vested interest in the laws



and regulations governing the conduct of campaigns. Whether they are the most ardent supporters of campaign finance reform, like Vermont Independent Senator Bernie Sanders, or the most vocal opponents, like Senate Majority Leader Mitch McConnell, all members have a stake when it comes to campaign finance reform. According to data published by the Center for Responsive Politics, \$3.6 billion was spent on congressional elections in 2012 ("The Money Behind." 2013). The Campaign Finance Institute examined FEC data and found that in 2012, Independent Expenditures spent \$457 million on congressional elections ("Campaign Finance Institute." 2015).

In the wake of the Supreme Court's decisions, advocates of Campaign Finance Reform face the difficulty of convincing Congress to take on the challenge of overhauling the nation's campaign laws. The Supreme Court has now established several principles that supporters of changing current laws and practices will have to work around, in particular with regards to capping funding for elections. Many Americans wonder why Congress will not just simply pass a law that would reform the system around the Supreme Court decisions that have dramatically altered American elections. However, the Supreme Court has ruled that much of what Congress had done to regulate campaign finance was unconstitutional. Barring passage of a Constitutional amendment, Congress cannot address that question directly. However, Congress has significant authority to re-write campaign finance laws, if it chooses to do so.

The only way in which Congress can directly overturn the Court's decision is through a Constitutional Amendment. When it comes to altering the document that is the basis of the United States government, it should not come as a shock that the process is lengthy and requires substantial debate. To adopt a Constitutional Amendment, first a

Member of Congress must introduce a joint resolution stating the nature of the proposed change to the Constitution. It is then referred in both chambers to the Judiciary Committee. Those committees would then review the proposal, and, if the committee chooses to do so, hold a hearing on the proposed change. Next, the committee would need to hold a business meeting and vote to approve the measure, thus sending it to the floor.

If the committee does not act on the measure, the resolution would die and the effort would have to begin again at the start of the next Congress. So, it is essential to the success of the effort that supporters of campaign finance reform work with the Judiciary Committees and try to prepare a successful path out of committee.

The challenge for a Constitutional amendment gets even more difficult at the next step – the floor. Both the House and the Senate would need to adopt the resolution by a 2/3-majority vote, a significantly difficult threshold. Once it has passed both chambers, the amendment must then be ratified by 3/4ths of the states, or 38 states, in order to take effect. There have only been 27 Constitutional Amendments approved; the last was a relatively non-controversial change to pay for Members of Congress, adopted in 1993 (Historian, 2015).

The other alternative is for members who want to change the system to find methods of doing so that the Court has allowed, and use them to overhaul campaign finance law. For example, the Court has held that Congress may require significant disclosure about who is donating how much money to which campaign. They could add on to the current levels of disclosure to see who is funding some of the independent campaigns.

As with a Constitutional Amendment, the first step is getting a member to introduce a bill. Next, there need to be co-sponsors, and ideally bi-partisan co-sponsors to attract the

attention of congressional leadership to ensure the bill has widespread support. This could be difficult given the hyper partisan environment in the 114<sup>th</sup> Congress. Once there are co-sponsors and the bill has gained traction, the bill is referred to committee. The committee must pass the bill in committee in both chambers, which would take a concerted effort on the part of campaign finance advocates, and which may not work even with that if Republicans continue to control both chambers of Congress. In order to ensure the bill does not die in committee, the sponsor must work with the Speaker in the House, and the Majority Leader in the Senate to ensure it moves through committee.

After the bill arrives in committee it falls on the sponsor to ensure the chair of the committee allows the bill to be heard. Once the bill is referred to committees in both chambers, the committees will hold hearings before determining whether or not to recommend passage of the bill. Once a committee recommends passage, the bill moves to the floor for a vote.

If the bill passes in both the House and the Senate, odds are the provisions in the two measures will differ. Members would then negotiate to reach a compromise on the bill. If a compromise is reached, both chambers will then vote on the deal to approve the measure. If it is approved by both chambers, the bill will move to the President's desk, where he may either sign it (and it becomes law) or veto the bill (and it goes back to Congress for further action) (Oleszek 15, 2014). Moving legislation through Congress is a monumental task, but moving legislation of the magnitude of campaign finance reform is even more daunting, and its one few members seem willing to undertake.

Bills that Members of Congress have introduced in the last few sessions have dealt with campaign finance reform through a number of avenues. One piece of legislation

introduced in the 114<sup>th</sup> Congress is by Democratic Senator Michael Bennet of Colorado. The bill S.1480, would “prohibit solicitations of campaign contributions from lobbyists when Congress is in session- It prohibits Members of Congress, Senators, and candidates for the House of Representatives or the Senate from soliciting campaign contributions from lobbyists when their respective bodies are in session” (Bennet, 2015) Additionally, the bill “prohibits registered lobbyists from bundling large contributions from individuals and obtaining credit with Senators and Members of Congress for this bundling” (Bennet, 2015). This piece of legislation has been introduced in the Senate, but no action has been taken thus far.

In the House of Representatives, Democratic Representative Adam Schiff, from California, has introduced a constitutional amendment in the 114<sup>th</sup> Congress, H. J. Res. 58, which would overturn the Citizens United decision and allow public financing of campaigns. In a press release from his office, Congressman Schiff said the point of his proposed amendment was that, “Nothing in this Constitution shall be construed to forbid Congress or the States from imposing reasonable content-neutral limitations on private campaign contributions or independent election expenditures, or from enacting systems of public campaign financing, including those designed to restrict the influence of private wealth by offsetting campaign spending or independent expenditures with increased public funding” (Schiff, 2015). According to Congress.gov, these are two of eleven bills introduced that would bring major change to the electoral system (Library of Congress, 2015).

These pieces of legislation show that some members of Congress are ready for change to the political system. With that said, the likelihood of Congress passing substantial campaign finance reform legislation is fairly low, given that Republicans control both chambers, and the Republican Party is largely opposed to campaign finance reform. Even though campaign finance reform legislation has been introduced, there is a slim chance it would survive the grueling legislative process coupled with the partisan reality the American political system finds itself in. An article by the Huffington Post, titled, "Republicans are about to gut campaign finance rules even further", noted that Republicans attached an amendment to the Senate's Financial Services and General Government appropriations bill would eliminate "... limits on coordination between candidates and political parties" (Blumenthal. 2015). This article illustrates exactly why reform is unlikely to happen, due to the Republican control of the House and Senate, unless substantial changes occur in the next election cycle.

## **V. Campaign Finance Reform and the Presidential Election**

While an understanding of the history of campaign finance reform and congressional responses is important, equally as important is understanding where the future of reform lies. With the proposed legislation from this Congress unlikely to make it to the floor for a vote, advocates are focusing their efforts into what lies ahead. One key element that many have set in their sights is the 2016 election.

In the Democratic primary, there are five announced candidates running for President: Hillary Clinton, Senator Bernie Sanders, Lincoln Chaffee, Martin O'Malley, and Jim Webb. Former Secretary of State Hillary Clinton is seen as the front-runner, with most

polls having her ahead of possible Democratic opponents by 38 points, according to recent poll by Quinnipac (Malloy. 2015). With such a substantial lead, many see her as the inevitable Democratic Party nominee. Having kicked off her campaign officially on April 12th, Clinton has since endorsed a version of campaign finance reform. Speaking in Iowa, Clinton said, "We need to fix our dysfunctional political system and get unaccountable money out of it once and for all -- even if it takes a constitutional amendment" (Rucker, 2015). When presidential candidates make campaign finance reform a part of their campaigns, it is apparent that there is an issue.

One of the most ardent supporters of campaign finance reform, and another candidate for the Democratic nomination is Vermont Senator Bernie Sanders. Senator Sanders has frequently and strongly voiced his support for reform, and on his campaign website, he says that he believes "our democracy is under fierce attack" ("Getting Big," 2015). Senator Sanders has called for an overturn of the *Citizens United* ruling since the decision in 2010, and believes that, by positioning his anti-*Citizens United* message in his presidential campaign, overturning the decision will resonate with voters.

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In a recent interview, Senator Sanders outlined one possible solution he would propose if he were elected President. Senator Sanders said, "One way which I find intriguing is that you basically provide \$100 for every citizen in the United States of America, and you say to that person, 'Here's your hundred bucks, you can make a contribution, you can get a \$100 tax credit if you spend \$100 on any candidate you want,'" Sanders said. "I think that would democratize very significantly the political process in America and take us a long way away from these Super PACs controlled by billionaires who are now buying elections." (Vox.com. 2015).

Former Maryland Governor Martin O'Malley also is largely in favor of reform. While not a topic covered on his campaign website, spoke in favor of campaign finance reform at a rally in New Hampshire in March, saying that, "I'm for overturning *Citizens United*." He noted that, "more cities are moving to publicly financed campaigns" and that he hopes that movement will "bubble up" and begin affecting larger elections. Former Virginia Senator Jim Webb and former Rhode Island Governor Lincoln Chaffee have yet to release their positions on campaign finance reform.

Most of the Republican candidates for President do not support campaign finance reform. Exceptions are South Carolina Senator Lindsey Graham, who told *The Atlantic* Magazine that, "You're going to have money dumped in this election cycle that's going to turn off the American people. There's going to be a need and a movement to try to control the money in politics" (Graham. 2015). Senator Ted Cruz, the Tea Party supporter from Texas, noted that, on the subject of money in politics,

"I've told my six-year-old daughter, 'Running for office is real simple: you just surgically disconnect your shame sensor, because you spend every day asking people for money. You walk up and say, 'How are you doing, sir? Can I have money? Great to see you, lovely shirt, please give me money.' That's what running for office is like."

While Cruz does not support campaign finance reform, he acknowledges money's increased role in elections. Another GOP presidential candidate who has spoken on the issue is New Jersey Governor Chris Christie. Christie says that he believes, "...what is corrupting in this potentially is we don't know where the money is coming from" (Graham. 2015). What these statements show is that, even though campaign finance reform is largely a liberal issue, some conservatives acknowledge that there are problems and concerns, and do seek changes to the system of some type. Given the President's ability to appoint justices to the

Supreme Court, campaign finance reform advocates hope the next President will, if given the opportunity, appoint a justice who will support campaign finance reform.

Due to the fact that four justices will be over the age of eighty during the next President's term, and the average age of retirement for Supreme Court justices is 79 years old (Fuller. 2014), many advocates for reform are seeking a candidate who will nominate justices who will support overturning the key *Citizens United* ruling. Senator Bernie Sanders has made it clear on the campaign trail that he will only nominate justices who are opposed to the *Citizens United* ruling, saying on CBS's *Face the Nation*, "If elected president, I will have a litmus test in terms of my nominee to be a Supreme Court justice and that nominee will say that they are going to overturn this disastrous Supreme Court decision" (Politico, 2015). By taking such a staunch stance so early in the 2016 cycle, many advocates of reform are looking to Senator Sanders to be the candidate for campaign finance reform they feel the country needs.

If the 2016 election is anything like the 2012 election, there is a high likelihood that money will play a substantial factor, and there is already evidence supporting that claim. The two front-runners in the race, Hillary Clinton for the Democrats, and Jeb Bush for the Republicans, have each amassed very large amounts of money in their first few months as candidates. According to a story published by RealClearPolitics, Clinton's campaign raised \$45 million since her announcement on April 12<sup>th</sup>. Clinton's campaign amount surpassed that of President Obama's reelect campaign in 2012, which brought in \$41.9 million in the same timespan. SuperPACs supporting her bid brought in \$25 million, bringing Clinton's total roughly \$70 million. Former Florida Governor Jeb Bush brought in \$11.4 million since announcing his bid for the White House on June 15<sup>th</sup>. More impressive than that, though, is



the fact that the SuperPAC supporting his candidacy, Right to Rise PAC, raised an astonishing \$103 million in the six months since it began (Desiderio. 2015).

While there are definite possibilities to see substantial campaign finance reform, it is not very likely. Because even if the American people elect a pro-reform candidate such as Bernie Sanders, the Congress who will be working with that president will have to support reform as well. If the current Congress is any indication of the next Congress, there will more than likely not be any major shifts in the balance of power in Washington. However, advocates for reform are still trying to work toward reform, even with the partisan Congress.

## **VI. Conclusion**

The elections process in the United States, specifically the campaign finance system, has changed drastically since the 1970s, when candidates could run elections for a fraction of what it takes to run an election today. Due to decisions from the Supreme Court and laws passed by Congress, the campaign finance system has left American elections in a dangerous position. Campaign finance laws like FECA and BCRA set limits and created stricter regulations which candidates are required to follow. Challenges to these laws, brought by those who felt the strict controls violated their First Amendment rights, resulted in Supreme Court rulings that discarded many of the restrictions and left a lot of room for those who care to participate in the system by giving large amounts of money to candidates or their supporters.

Given the current partisan climate of Congress, the likelihood that the legislative branch will take action is unlikely. However, there are ways in which Congress can act.

They can either pass laws that fill the gaps in between the decisions from the Court, or they can pass a Constitutional Amendment. Even though there are avenues that can be taken, campaign finance reform advocates have set their sights on the 2016 presidential election, where there is a stark contrast between candidates who support campaign finance reform, and candidates who vehemently oppose it. Campaign finance reform advocates believe that this upcoming election will serve as a bellwether for how soon the United States will see substantial campaign finance reform.

The modern campaign finance system is facing an abyss. Due to decisions from the Supreme Court, and laws passed by Congress, the campaign finance system has become a bidding war, with those at the top having the ability to buy and sell elections. In this post-*Citizens United* electoral system, campaign finance reform advocates point to the change in the costs of elections over the last thirty years, with the total cost skyrocketing nearly 400% ("*Vital Statistics on Congress*", 2013), as well as the ability for PACs to accept anonymous donations as evidence that change is an absolute necessity.

While current campaign finance laws provide some form of regulation for candidates to follow, the ways candidates can skirt around them are far too many. For example, *The Huffington Post* reported that in the most recent spending bill before the Senate, there was a provision added that would, "relax [restrictions against] campaign finance coordination between candidates and the political parties" (Blumenthal. 2015). Loopholes like this, as well as loopholes in which super PACs can function, are frequent, and often allow candidates the opportunity to exploit them, thus undermining democracy and the electoral process.

Campaign finance regulations, whether they are laws passed by Congress, or the result of Supreme Court decisions, have changed the face of electoral politics, and have potentially irreparable consequences. Due to decisions like *Citizens United* and *Buckley*, which have allowed the ability to spend almost unlimited amounts of money to influence or buy an election, the American people need to say enough is enough. With the upcoming election, many hope candidates like Bernie Sanders and Hillary Clinton, who have both come out against the *Citizens United* ruling can energize the American people enough that Congress gains the political will to create substantial change. Sanders has been a vehement critic of the Court's decision, and Clinton recently told her fundraisers that she, "would only nominate Supreme Court justices who wanted to overturn *Citizens United*" (Prokop. 2015). These candidates are not only saying that they acknowledge that there is a problem; they are offering solutions to address it.

The 2016 election has the potential to be telling as to whether America sees change or further allows the electoral process to be a billionaire's game. A January 2015 poll conducted by Pew showed that 42% of Americans rate the issue of money in politics as a top priority issue. This is a change from three years ago, when only 28% of people said the same (Pew, 2015). According to a *New York Times* article published on August 11, Lawrence Lessig, a Harvard law professor and vocal campaign finance reform advocate, is launching an exploratory committee to run for President, on only one platform: returning elections to the people through what he calls, a "referendum presidency". Lessig's "referendum" is focused around returning democracy to the American people through passing campaign finance reform. Lessig noted that, if elected, he will, "work until the referendum passes" and then resign, allowing the elected Vice President to serve the

remainder of the term ("First Draft" 2015). While the issue of campaign finance reform is a critical step in maintaining democracy, the American people must show the desire for change. With the percentage of Americans rating it as a top priority almost doubling in just a few year's time, and with someone like Lessig putting himself out there and taking a stand, advocates of reform believe the time may have arrived for substantial change.

Fred Wertheimer and Susan Weiss Manes, asserted in their pre-*Citizens United* contribution to the Columbia Law Review, "Campaign Finance Reform: A Key to Restoring the Health of Our Democracy" that, with all of the changes to the campaign finance process, the one's who are most affected are the American people (Wertheimer, 1994). Wertheimer has been a staunch advocate for campaign finance reform, and is seen widely as one of the biggest proponents of reform. When everyday Americans feel as though they are being left out of the process, what, then, is the purpose of government, Wertheimer and Manes ask. Campaign finance reform advocates support assertions similar to those of Wertheimer and Manes, proposing that government was designed for the people, and if their voices are being drowned out in favor of the richest among us, who is left to be represented by the government?

When the current political landscape allows for one family to budget nearly \$1 billion to buy elections, or when fewer than 400 families are responsible for half of the elections funding going in to the presidential election for 2016, it is time for a serious conversation on the future of American elections. The President, and Congress could take action to ensure the will of the people is validated, and that the top echelon of society is not the only body represented by government. There are options that our leaders can take to

ensure the restoration of American democracy, and a return to government that is of, by, and for the people.

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