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Is Money "Speech"?

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Is Money Speech?

Michael J. Boyle and Miguel Glatzer

Historical Background

- Prior to the 1970s, U.S. campaign spending was limited by an array of federal and state rules
 - Restrictions on corporations, unions and federal employees
 - Individuals were limited
 - Corporate donations funneled through Political Action Committees (PACs)

Historical Background

- Following Watergate, a series of laws in the early 1970s tightened contributions of PACs and individuals to campaigns and parties
- Created Federal Election Commission
- 1976: Buckley vs. Valeo:
 - Ruled that restrictions on campaign spending and finance violated the 1st amendment
 - Individuals and corporations could still have limits both to individual campaigns and across the electoral cycle

Historical Background

- Results:
 - Explosion of PACs and individual funding
 - Rise of “soft money” given to parties for campaign
- Bipartisan Campaign Reform Act (McCain-Feingold) (2002)
 - Bans soft money
 - Banned funding from outside groups

Historical Background

- Citizens United (2010):
 - Ruled that it was a violation of the First Amendment to limit the spending of an external group on a campaign
 - Did not allow unlimited corporate donations, but unlimited corporate issue advocacy
 - Result was the creation of Super PACS which can run ads on behalf of candidates

Historical Background

- McCutcheon vs. Federal Election Commission
 - Ruled that aggregate limits on individuals campaign contributions were violation of the 1st amendment
 - Previous limit per cycle had been \$117,000 per person
 - Raises question about whether PAC donations limits will be rolled back

Campaign Funding per Year

	Individual	PAC	Super PAC	Non-Disclosing Groups
To each candidate	\$2600	\$5000	\$0	\$0
To a national party	\$32,400	\$15,000	\$0	\$0
To state, district and local committee	\$10,000	\$5,000	\$0	\$0
To any other political committee	\$5,000	\$5,000	\$0	\$0
Issue Advocacy	Unlimited	Barred	Unlimited	Unlimited

Source: FEC, data from 2013

Data: President Election 2012

Candidate	Barack Obama	Mitt Romney
Raised	\$715m	\$446m
Spent	\$683m	\$443m
With Super Pacs	\$1.10b	\$1.24b
Top Sector	Lawyers and Lobbyists (\$27m)	Finance, Insurance and Real Estate (\$58m)
Top Donors	University of California*, Microsoft, Google	Goldman Sachs, Morgan Stanley, Bank of America
Small Money Donations	57%	24%

Source: <https://www.opensecrets.org/pres12/>

Questions:

- Should there be limits on political donations?
- What are the advantages and disadvantages of doing so?

Limits on Political Donations?

- Yes

- Reduce corruption
- Reduce the appearance of corruption
- Increase trust in government
- Level the playing field between candidates
- More party competition

- No

- Free speech!
- More speech the better
- Should be free to criticize your government
- Campaigns are expensive
- Population is reliant on mass media

How Would We Limit Campaign Donations?

- How much can an individual donate to:
 - Candidate?
 - Party?
 - To a Private Issue-Based Organization (e.g. NRA, Sierra Club?)
 - In an Election Year?
- Should corporations, non-profits and unions be limited in the same way?
Different way?

Disclosure

- How should disclosure work?
 - Should every organization have to disclose its donors?
 - How quickly available, and easily available, should that information be?
 - Should individuals have the right to make a private, undisclosed donation to a candidate?
 - Is sunlight enough to make the system better?

Public Financing?

- What are the advantages and disadvantages of public financing?
- How would we decide:
 - Who gets public financing?
 - How much public funding a candidate should receive?
 - With a public financing system, do we:
 - Ban private money?
 - Limit private money?