**Political Science 511- Campaign Finance**

**Syllabus**

Money is the mother’s milk of politics.

– Jesse Unruh, 1960s

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

– Mark Hanna, 1895

It 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.

**I. Course Description**

Elections cost money. In the U.S., candidates have spent money running for public office prior to the beginning of the Republic (when George Washington ran for the Virginia colonial legislature, he distributed hard liquor at rallies as a way of attracting support). Now, expenditures in federal elections (presidential and congressional) run to the billions of dollars.

Over the past 10 years, the regulatory regime for campaign finance – the rules that determine who can donate or spend money, what counts as campaign expenditures, and how much information would be disclosed about those activities – has changed radically, through Supreme Court decisions that have invalidated restrictions and limits, laws that have liberalized rules, and administrative actions that have eased enforcement and declared more activity outside the scope of regulation.

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, different definitions and concepts of corruption, 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 are outpacing efforts to control them. We will also investigate whether recent technological developments will eventually render moot the current regulatory paradigm.

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1 Possibly apocryphal; this quote has been attributed to a number of people.
The connections between money and the coercive power of government raise questions about who gets elected, how public officials make decisions, and how much influence average voters and citizens have in the political process. The main questions appear simple, but they are actually fundamental issues about the meaning of democratic governance:

- **Do officials give preferential treatment to those who give campaign funds? Is this a problem?**
- **Can campaign contributors “purchase” legislation or favorable regulatory or judicial decisions?**
- **How do we define “corruption?” Should that definition cover only outright bribery and explicit agreements to exchange official actions for money? What happens if you use a broader definition?**
- **Can a wealthy super donor engineer the election of a someone who otherwise wouldn’t stand a chance?**
- **Are regular people frozen out of the political process if they lack the funds to contribute?**
- **Is it a problem that the first question a potential candidate must answer is not “what are your issue positions” or “what do you want to accomplish,” but rather “how much of your own money can you spend on your campaign?”**
- **Does limiting or controlling campaign expenditures constitute censorship?**
- **Is it even possible to define, with any precision or clarity, what counts as “campaign spending?” What are the implications of answering “no” to this question?**

From a slightly different perspective, all of these question are really asking: **Is our system of funding elections compatible with our notions of democracy, liberty, representation, and equality?** Although this may appear to be a modern problem, it is not.

To campaign finance reformers, the answers are so obvious as to barely merit discussion; of course wealthy groups and big donors get favorable treatment and policies, and anyone who disputes this is willfully blind. Vast economic inequality is thus converted directly into vast political inequality, which then reinforces economic inequality in a corrosive feedback loop. In such a system, wealthy donors literally purchase government action at the expense of the public good, and the average person doesn’t stand a chance. The equally obvious response is to limit the amount that individuals or groups can contribute to candidates, prohibit certain kinds of contributions and spending, restrict what candidates can spend on elections, and provide alternative sources of funding.

Others, however, argue that donating money to candidates or spending money to get them elected is no different than speaking out in favor of that candidate, and hence should be afforded the highest levels of 1st Amendment protection. Efforts to limit this means that the government is dictating who can say what, and when. The government should not be permitted to put its thumb on the scale and decide who gets to speak and who must be silent, or how much people can speak before they must stop speaking. Back this up with criminal penalties, and the result is an oppressive government punishing people for exercising their core First Amendment rights.
The issue has become more timely and controversial in the wake of landmark Supreme Court decisions that have all but deregulated the campaign finance system. In *Citizens United v. FEC*, 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 declared the end of democracy as we know it, and a new (and sad) era of unlimited influence of special interests, as corporations were now free to drop billions of dollars to efforts to get candidates elected or defeated. Defenders of the decision argued that if individuals have the right to spend unlimited amounts of their own money on independent efforts then those rights should not disappear just because people exercise that right in a group. It has become even more salient with the influence of technologies that blur the distinction between domestic and foreign influence.

What values are at stake here? Which should take precedence? Should we value equality over liberty? Liberty over equality? Do we really have to choose one or the other? Are there any other interests involved, such as protecting the integrity of the democratic process, or preserving the time of legislators?

By the end of the semester, you should be able to:

- Understand and articulate the major philosophical and constitutional rationales and arguments for a more (and less) restrictive regulatory framework for campaign finance
- Identify the connections between regulatory structures and the political consequences (both intended and unintended) of those structures
- Understand the history of campaign finance regulation, the causes of major changes, and the current regulatory structure
- Understand the jurisprudence and major Supreme Court decisions that have set the terms of campaign finance regulation
- Connect controversies over campaign finance regulation to broader themes in American politics

II. Course Readings
Much of the course readings are from the following books (you can get them from University Bookstore, or wherever you can get a better deal; I have assigned them before, so there should be used copies around)


Zephyr Teachout, *Corruption in America: From Benjamin Franklin’s Snuff Box to Citizen’s United* (Cambridge: Harvard University Press, 2014)
Other readings will come from articles that I will make available on the course website at Learn@UW. Keep in mind that much 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 take time to understand. You will have an especially hard task if you let them pile up.

III. Course Credit and Grade Components
This course is 4 credits, reflecting 150 minutes of lecture and 50 minutes of section each week over approximately 15 weeks. The expectation is that you will spend a minimum of 8 hours each week outside of class on reading, studying, section assignments, and other forms of preparation (it will probably be more).

Your grade will be based on your performance on four assessments

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<th>Assessment</th>
<th>Date</th>
<th>Percentage</th>
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<tr>
<td>6 Week Exam (in class)</td>
<td>October 11</td>
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<tr>
<td>12 Week Exam (take-home)</td>
<td>Due November 15</td>
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<tr>
<td>Final Exam (take-home)</td>
<td>Due December 19</td>
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<td>Section (ongoing)</td>
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Section will include some short assignments that you will complete either as a group or individually. Please check your calendars and clear them now, as I do not give makeup exams.²

IV. TA and Discussion
Section attendance and participation is required; it is a key part of the course, and will offer an opportunity to go into the materials in more detail, and to have conversations about key readings and arguments.

The TA for the class is Elizabeth Sawyer (esawyer3@wisc.edu), a Ph.D. Candidate in the political science department.

Thursday sections will meet the first week of class, though they will be devoted to organizational matters (Tuesday sections will meet starting in week 2).

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<tr>
<td>302</td>
<td>Tuesday</td>
<td>3:30-4:20</td>
<td>6125 Social Science</td>
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<tr>
<td>303</td>
<td>Thursday</td>
<td>3:30-4:20</td>
<td>6125 Social Science</td>
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<tr>
<td>304</td>
<td>Thursday</td>
<td>4:30-5:25</td>
<td>225 Ingraham</td>
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Elizabeth will hold office hours on Tuesdays and Thursdays, 2-3PM.

Some web sites:

² 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 emergency, or medical problem. Nonrefundable plane tickets do not fall into these categories.
V. Old Man Yells at Cloud

You probably rely heavily on a laptop to take notes in class. What you probably don’t realize is that this is a poor educational strategy. Students who take notes longhand retain and understand more (and get higher grades) than students who use laptops, mostly because when you use a laptop you put more effort into transcribing everything verbatim than trying to understand what the speaker is saying (and research shows that the laptop is what hurts). Taking notes longhand forces you to process and analyze what is important as you go.

The evidence has become overwhelming, and the distraction element is impossible to ignore. Few people can resist the temptation to go online to check email, shoot a text about how boring Buckley v. Valeo is, or drop in on Instagram, Snapchat, Twitter, ESPN, Reddit, Vox, or whatever site is your favorite. You may think you can multitask, but you really can’t. What’s even more compelling is that when you use a laptop or go online during class, you distract and lower the performance of people sitting around you.

So, I am banning laptop use in this class. You must take notes longhand.

However, I understand that some of you may have a legitimate educational reason to use a laptop to take notes. There are a variety of circumstances that can justify this, but rather than specify what those are I will leave it to your judgement. You get the final decision on whether or not you have a legitimate reason. The only conditions are that if you decide that you will use a laptop in either lecture or section (or both), you must use it exclusively for note taking (and not multitasking or surfing) and you must notify me in an in-person meeting.

I will also ask you to put away your phones and other electronic devices at the beginning of lecture unless you are using them to take notes as outlined in the previous paragraph. Going offline will seem impossible at first, and your friends may worry that you have fallen down a well when you don’t respond to their text messages within 15 seconds. But I assure you that you will not actually die from disconnecting, even though it might feel that way initially. You may even come to realize that you aren’t paying attention in class when you are online, and

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that you don’t really need to know if Netflix is serious about rebooting Firefly or whether Brienne of Tarth and Sandor Clegane are ever going to hook up. At least not right this second. Remember what the Dalai Lama says (or probably would say) about this kind of thing: if you’re here, be here.

VI. Topics
Note: Because the legal landscape has changed so much in the past 5 years, and so many novel questions have arisen in the past 2, that the way I have taught the course for the last 25 years no longer works. Rather than use chronological orientation, we will attack the questions conceptually and philosophically. I have an idea about how long each part will take, but the actual amount of class time we spend will depend on questions that you have, reactions to current developments, guest lecturers (there will be a few), and the amount of time it takes to get through the material.

Every Thursday, I will give more detailed information about what readings and subjects we will cover in section the following week.

Part 1: Initial Thoughts About Elections, Representation, Political Communication, and Campaign Spending. Can We Even Know How Much is Spent, Who Spends it, and Where It Comes From? And Do We Really Need to Worry About This?

Readings:
- Mutch, chapters 1-5 (this is a straightforward overview)
- Hasen, Plutocrats United introduction.

Part 2: An Introduction to Where We Are.

Readings:
- Orin S. Kerr, “How to Read a Judicial Opinion: A Guide for New Law Students” Learn@UW
- Citizens United v. Federal Election Commission 588 U.S. 50 (2010), selected passages. Learn@UW
- McCutcheon v. Federal Election Commission 572 U.S. ___ (2014), selected passages. Learn@UW.
- Jennifer Rubin, “A Triumph for Political Speech,” Commentary, May 2010. Learn@UW
- John Nichols and Robert McChesney, “Dollarocracy,” The Nation, September 30, 2013. Learn@UW

Part 3: What Are We Trying to Solve? What is the Problem? How Do We Know It When We See It? Different Conceptions of Corruption and Influence (Expected time 2 weeks)
We are going to spend some time on this, as the subject is at the core of the debate over campaign finance. In campaign finance, the jurisprudential rule is that the only justification for regulating money in politics is the interest in “preventing corruption or the appearance of corruption” (you’ll see that phrase, in one form or another, in virtually every Supreme Court campaign finance decision). What do we mean by corruption?

Readings: Teachout, Corruption in America, Introduction and chapters 1-5
Hasen, chapters 1-2
Samples, Introduction
Center for Responsive Politics, “There’s Money in Marijuana; Industries Fight to Maintain America’s War on Drugs and Keep Marijuana Illegal.”

Part 4: Competing Visions of Politics: Equality, Influence, and Fairness (Expected time: 2 weeks)

We will analyze two main bodies of thought, using Samples’ classification: the “progressive” paradigm, and the “Madisonian” paradigm. While the terminology is not bulletproof, it is sufficient to identify the main threads, and place the previous section on the goals of campaign finance regulation into different contexts.

Readings: Samples, The Fallacy of Campaign Finance Reform, chapters 1-5
Hasen, chapters 3-4


Readings: Buckley v. Valeo 424 U.S. 1 (1976), selected portions. Learn@UW

Part 6: Campaign Finance Through History to the Current Regime (Expected time: 2 weeks)

Samples, chapters 7-8
Teachout, chapters 7-12
Part 7  The Deregulatory Moment

Readings: Teachout, chapters 13-15
Mutch, chapter 9

Selections from the following Supreme Court decisions:
Learn@UW
Learn@UW
Learn@UW

Part 8  Unintended (and Intended) Consequences


Part 9  So What Happens Now? (expected time: 2 weeks)

Readings: Samples, chapter 9
Hasen, chapters 5-9
Mutch, chapter 10
Nathaniel Persily, “Facebook May Soon Have More Power over Elections than the FEC. Are We Ready?” Washington Post, August 10, 2016.