

Political Science 511  
UW Madison  
Professor Mayer  
Office Hours: Wed, 10-11AM or by appt.

I, 19-20  
4 Credits  
TR 9:30-10:45  
L196 Education

## Political Science 511- Campaign Finance Syllabus

Money is the mother's milk of politics.  
– Jesse Unruh, 1960s<sup>1</sup>

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 since before 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 presidential and congressional elections run to the billions of dollars. Almost all of that money comes from individuals (and now, organizations, including corporations) who contribute and spend in order to affect which candidates win, which candidates lose, what voters think about, and what issues are discussed.

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 questions appear simple, but they actually raise 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? Or does “excessive influence” count? What happens if you use the broader definition? Who decides?*
- *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?*
- *Does limiting or regulating campaign expenditures constitute censorship?*

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<sup>1</sup> Possibly apocryphal; this quote has been attributed to a number of people.

- *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 questions 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.

In the reform view, the answers are so obvious as to barely merit discussion; *of course* wealthy groups and big donors get favorable treatment and policies. *That’s why they donate!* Anyone who disputes this is willfully blind. To reformers, vast economic inequality is thus converted into vast political inequality, which then reinforces economic inequality in a corrosive feedback loop. In such a system, wealthy donors and corporations 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.

The counterargument, however, is 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 1<sup>st</sup> Amendment protection. Efforts to limit spending amount to the government dictating who can say what, when they can say it, and often they can say it. 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, critics argue, and the result is an oppressive government punishing people for exercising their core First Amendment rights.

At the same time, we already place limits on who can speak – foreign nationals, for example, are already prohibited from making campaign expenditures or

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?

The issue has become more timely and controversial in the wake of landmark Supreme Court decisions that have deregulated much of the campaign finance system. 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. The Supreme Court has invalidated restrictions and limits; laws have liberalized rules; and administrative actions have eased enforcement and declared more activity outside the scope of regulation. The Federal Election Commission today lacks even a quorum to initiate any enforcement actions, and its bipartisan structure often led to gridlock.

The 2016 election and the rise of social media raise even more questions. There is no question that foreign entities – including Russian government proxies – illegally purchased campaign ads and used online platforms like Twitter, Facebook, and YouTube to attempt to influence the election. Do the

existing rules – which generally leave non-express advocacy alone, and put the burdens of disclosure on the groups making expenditures – work in this new environment?

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 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.

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 (or 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**

Some 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).

Richard L. Hasen, *Plutocrats United: Campaign Money, the Supreme Court, and the Distortion of American Politics* (New Haven: Yale University Press, 2016)

John Samples, *The Fallacy of Campaign Finance Reform* (Chicago: University of Chicago Press, 2006)

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 14 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 a your performance on four assessments

6 Week Exam (take home)	October 10	20%
12 Week Exam (take-home)	November 21	25%
Final Exam (take-home)	December 17	30%
Section (ongoing)		25%

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.<sup>2</sup>

#### **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.

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Tuesday 12:05 p.m. (Social Science 6125)

Wednesday 8:50 a.m. (Ingraham 115)

Wednesday 9:55 a.m. (Van Hise 227)

The TA for the class is Michael DeCrescenzo (decrescenzo@wisc.edu), a Ph.D. candidate in the political science department. His office hours will be Tuesdays, 2–4 p.m., in North Hall 101A (the Elections Research Center).

#### **V. Old Man Yells at Internet**

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,<sup>3</sup> 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, Facebook, ESPN, Reddit, Vox, or whatever site is your favorite. You may think you can multitask,

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<sup>2</sup> 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. Vacations and nonrefundable plane tickets do not fall into these categories.

<sup>3</sup> Cindy May, "Students are Better Off without a Laptop in the Classroom," *Scientific American*, July 11, 2017. F. Sana et al, "Laptop Multitasking Hinders Classroom Learning for Both Users and Nearby Peers," *Computers & Education*, March 2013. P. Mueller and D. Oppenheimer, "The Pen is Mightier than the Keyboard: Advantages of Longhand over Laptop Note Taking," *Psychological Science*, April 2014. N. Aguilar-Roca, A. Williams, and D. O'Dowd, "The Impact of Laptop-Free Zones on Student Performance and Attitudes in Large Lectures," *Computers & Education*, December 2012.

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 that you don't *really* need to know if Netflix is serious about rebooting *Firefly*. 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**

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 several), 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. Readings marked with \* are available on Canvas

- 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: Hasen, *Plutocrats United* introduction.  
Maggie Koerth-Baker, "Everyone Knows Money Influences Politics. . . Except Scientists, *FiveThirtyEight*, June 4, 2019.\*  
Bipartisan Policy Center, *Campaign Finance in the United States: Assessing an Era of Fundamental Change*, pp. 8-12 (January 2018).\*

**Part 2:      **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.****

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:      Hasen, chapters 1-2  
                  Samples, Introduction  
                  Linda W. Powell, “The Influence of Campaign Contributions on Legislative Policy,”  
                                  *The Forum* 11:339-355 (2013).\*

**Part 3:      **An Introduction to Where We Are****

Readings:      Anthony Corrado, “The Regulatory Environment of the 2016 Election,” in David  
                                  Magelby, ed., *Financing the 2016 Election* (Washington, DC: Brookings  
                                  Institution Press, 2017)\*  
                  Bipartisan Policy Center, *Campaign Finance in the United States: Assessing and Era  
                                  of Fundamental Change*. January 2018, pp. 13-24. \*

**Part 4:      **Competing Visions of Politics: Equality, Influence, and Fairness****

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 of the argument.

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

**Part 5:      **The Constitutional Boundaries and Practical Problems. Is Money Speech, Is Money Money, Or, What?****

Readings:      Orin S. Kerr, “How to Read a Judicial Opinion: A Guide for New Law Students”  
                                  Learn@UW\*  
                  *Buckley v. Valeo* 424 U.S. 1 (1976), selected portions.\*  
                  Bert Neuborne. 1998. “Is Money Different?” *University of Texas Law Review*  
                                  77:1609-1625.\*

**Part 6:      **Campaign Finance Through History to the Current (sort of) Regime****

Readings:      Anthony Corrado, “Money and Politics: A History of Federal Campaign Finance  
                                  Law,” in *The New Campaign Finance Sourcebook*, Anthony Corrado, Thomas  
                                  E. Mann, Daniel R. Ortiz, and Trevor Potter, eds. (Washington, DC:  
                                  Brookings Institution Press, 2005). \*  
                  Samples, chapters 7-8

## **Part 7      The Deregulatory Moment**

Readings: Selections from the following court decisions:  
*Federal Election Commission v. Wisconsin Right to Life* 551 U.S. 449 (2007) \*  
*Citizens United v. Federal Election Commission* 558 U.S. 50 (2010)\*  
*McCutcheon v. Federal Elections Commission* 572 U.S. 185 (2014)\*  
*Speech Now v. Federal Elections Commission* 599 F. 3d. 686 (D.C. Cir., 2010)\*

## **Part 8      Unintended (and Intended) Consequences**

Readings: Benjamin Barr and Stephen R. Klein, “Publius Was Not a PAC: Reconciling Anonymous Political Speech, The First Amendment, and Campaign Finance Disclosure.” *Wyoming Law Review* 14: 253-288\*  
[David M. Primo, “Personal Data About Small-Donor Democrats is All Over the Internet,” \*New York Times\*, August 18, 2019.\\*](#)  
Heather Gerkin, “The Real Problem with Citizens United: Campaign Finance, Dark Money, and Shadow Parties,” *Marquette Law Review* 97:904-923.\*  
Abby K. Wood, “Campaign Finance Disclosure,” *Annual Review of Law and Social Science* 14:11-27 (2018).\*  
Congressional Research Service, *Donor Disclosure: 501(c) Groups and Campaign Spending*. October 18, 2018.\*

## **Part 9      So, What’s Up With Social Media and the Internet? Are We Doomed?**

Readings: Campaign Legal Center, *Examining Foreign Influence in U.S. Elections*, January 2018.\*  
Nathaniel Persily, “The 2016 U.S. Election: Can Democracy Survive the Internet?” *Journal of Democracy* 28:63-76.\*  
[Nathaniel Persily, “Facebook May Soon Have More Power over Elections than the FEC. Are We Ready?” \*Washington Post\*, August 10, 2016.\\*](#)  
Daniel I. Weiner, *Fixing the FEC: An Agenda for Reform*. Brennan Center for Justice, April 30, 2019.\*

## **Part 10      What Happens Next**

Readings: Samples, chapter 9  
Hasen, chapters 5-9  
Richard J. Pierce, “A Realistic Version of Campaign Finance Reform and Two Essential Steps Toward a Return to Effective Governance,” *GW Law School Public Law and Legal Theory Papers*, No. 2019-41.\*  
Richard L. Hasen, “Unlimited Donations to Candidates, Coming Soon?,” *The Atlantic*, July 26, 2019.\*

### **Some web sites:**

The Center for Responsive Politics: <http://www.opensecrets.org/>  
Federal Election Commission: [www.fec.gov](http://www.fec.gov)  
Campaign Finance Institute: <http://www.cfinst.org/>  
Election Law Blog Campaign Finance: <https://electionlawblog.org/?cat=10>  
Campaign Legal Center: <http://www.campaignlegalcenter.org/issues/281>  
IRS Political Organizations: <https://www.irs.gov/charities-non-profits/political-organizations>  
National Institute on Money in State Politics: <http://www.followthemoney.org/>  
Wesleyan Media Project: <http://mediaproject.wesleyan.edu/>