5.11 Campaign Finance
Explain how the organization, finance, and strategies of national political campaigns affect the election process.

The mother's milk of politics is money. Debates over the role of money in campaigns reveal the continuing tension between money and its sources versus democratic principles of competitive and fair elections. Federal legislation and case law pertaining to campaign finance demonstrate the ongoing interaction of money and democratic principles in elections. For most of our history money entered the political process without limit.

Democracy is not cheap. With escalating campaign costs the role of money in politics has increasingly grown muddled at best. Traditionally politics has been perceived of as a haven for fat cats. The perception that graft and corruption reign has always been close to the surface. The fear of a plutocracy, a government by the rich, has prompted our Congress more recently to pass campaign finance laws. These campaign finance laws were intended to assure a level playing field for all. They also emphasize the importance of transparency. Full and complete disclosure allows media watchdogs to police the relationship between our politicians and the moneyed class. These laws have been met by skepticism and suspicion.

The Federal Election Campaign Act [FECA] of 1971 was the first major piece of legislation that addressed money in politics. In addition to creating the Federal Elections Commission [FEC] that regulates campaign money this law put in place strict limits on both hard money and soft money. Hard money is money given directly to a candidate's campaign. This law limited that amount to $1,000. No single person could give more than $1,000 to a candidate's campaign. Soft money is money directed to the national political party. Though unlimited, the party could only use soft money for issue advocacy and get out the vote efforts.

This opening salvo to campaign finance limits was challenged in the court case Buckley v. Valeo (1976). The Supreme Court seemed to find valid arguments on both sides. The Court recognized that campaign money was protected under the First Amendment's free speech clause. Yet recognized the need for limits so as to assuage the perception that money unfairly benefitted a few in our political process. Not too surprising this law did not reduce money in the process nor did it reduce the perception of money's corrupting influence.

The formation of political action committees (PACs) quickly became a loophole to circumvent these new apparent limits. New money began to pore into thousands of PACs. These new PACs gave their newly raised money to the candidates. In the end money had not been limited at all. It had only been redirected.

The Bipartisan Campaign Reform Act [BCRA] of 2002 was intended to address the apparent loopholes that provided for big money influence. Hard money limits were

actually increased to $2,000 and indexed to inflation rates. Unlimited soft money was banned entirely. Often called by its nickname, McCain-Feingold hoped to improve upon the intentions of the previous legislation. The Court upheld these new provisions in the case McConnell v. FEC (2003). But again the result was the same. An unintended consequence was that political parties grew weaker. It also spurred the growth of outside independent expenditures.

Outside independent expenditures took on the form of 527 groups. These independent groups cannot work directly with the candidates nor can they funnel money to their respective campaigns. They can, however, collect unlimited amounts of money and use it to run ads that promote political candidates and their positions. Today these 527 groups have grown more and more significant to the political process.

The U.S. Supreme Court in *Citizens United* v. *FEC* (2010) accentuated the volatile split over those who see campaign money as an absolute First Amendment right and those who see money as a danger to fair elections. In their majority opinion, the Court essentially endorsed both individual and corporate participation with independent Super PACs. Justice Kennedy, writing for the majority said:

> *There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations. The Framers may not have anticipated modern business and media corporations…Yet television networks and major newspapers owned by media corporations have become the most important means of mass communication in modern times. The First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media. It was understood as a response to the repression of speech and the press that had existed in England and the heavy taxes on the press that were imposed in the colonies…The great debates between the Federalists and the Anti-Federalists over our founding document were published and expressed in the most important means of mass communication of that era—newspapers owned by individuals…At the founding, speech was open, comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge…The Framers may have been unaware of certain types of speakers or forms of communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types of speakers and media that provided the means of communicating political ideas when the Bill of Rights was adopted…*
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> *When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to*

control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

On the contrary, Justice Stevens for the minority wrote:

The majority's approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907…We have unanimously concluded that this "reflects a permissible assessment of the dangers posed by those entities to the electoral process," …and have accepted the "legislative judgment that the special characteristics of the corporate structure require particularly careful regulation"… Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty…Relying largely on individual dissenting opinions, the majority blazes through our precedents, overruling or disavowing a body of case law…The Court's ruling threatens to undermine the integrity of elected institutions across the Nation.

Debates over the role of money in campaigns, like in the *Citizens United* case, reveal the continuing tension between money and its sources versus democratic principles of competitive and fair elections.

Money, and we are talking about a lot of money, continues to flow into our political system. In our recent presidential campaign over $1 billion dollars was spent. Though some might say compared to our $6 billion spent annually on potato chips, electing a president is worth it.

Other campaign finance reforms have been suggested. The most frequently mentioned reform is replacing the current system of private money with publicly financed campaigns. This means that candidates would no longer need to solicit money. The federal government would underwrite the expenses of all national campaigns. A variation of this reform involves the federal government matching privately raised money. If a candidate chooses to accept federal money for their campaign they also agree to abide by stricter limitations on how and when that money is spent. Because most candidates can now raise more money then the federal government provides, they often choose not to accept the federal matching funds.

Money has always been the mother's milk of politics. For the foreseeable future, it still is.