

MONEY AND POLITICS

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CHALLENGES AND OPPORTUNITIES IN 2020 | ELECTION SERIES

The nearly yearlong Challenges and Opportunities in 2020 election series is a forum for academics, journalists, and others to comment on the issues at stake in the 2020 presidential election, and related topics front and center in American politics and society. The series promotes interdisciplinary conversations that explore undercurrents and themes affecting the upcoming election and the integrity of—and trust in—our democratic institutions.

ABOUT THE EVENT CO-SPONSORS

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ROBERT Y. SHAPIRO

President, Academy of Political Science

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Money, Power, and Corruption

ANDREA BERNSTEIN

MONEY HAS GREAT POWER in American politics. Referencing her *New York Times* bestselling-book, *American Oligarchs: The Kushners, the Trumps, and the Marriage of Money and Power*, Bernstein discussed what has led us to where we are today.

AMERICAN OLIGARCHS

- Money is so influential in our current system. Bernstein's book discusses how corruption has become more complicated over the decades. This is largely due to an increase in the number of channels for money to get into politics.
- In 2010, the Supreme Court issued a ruling in the case *Citizens United v. Federal Election Commission* giving corporations the First Amendment right to free speech in elections.
- In swing states that year, and then again in 2012 and 2016, nonstop political ads ran criticizing Washington, and portraying the government as bad and untrustworthy.
- By the time Donald Trump announced his candidacy in June 2015, voters had been receiving for five years the message of how the system is broken. Trump's message aligned well with this.

TRUMP'S PRESIDENTIAL CAMPAIGN

- Trump for decades has given enormous contributions to politicians from whom he wanted to receive benefits.
- In the primary campaign, Trump argued that he could not be bought because he was funding his campaign himself.
- Money from outside forces supported Trump's message—though not his campaign directly. Trump consequently was a huge beneficiary of contributions enabled by *Citizens United*.
- After the primary elections, Trump began to take donations. Once he won the general election, many donors became anxious that they would be left behind.
- Lots of donors poured money into Trump's inaugural committee. Some of these were familiar political donors, whereas some, such as the casino industry, were not.

SINCE TRUMP HAS TAKEN OFFICE

- Trump has signaled to people that those who give donations, or pay him directly by patronizing his businesses, will get benefits. This is much the same way he, as a private businessman, expected to be treated.
- People that have donated to Trump and his allied causes have gotten unprecedented access. For example, Lev Parnas and Igor Frugman (the individuals at the center of impeachment investigations) gave large sums of money to Trump-allied committees, and then asked for specific regulatory favors. This should not happen for a myriad of reasons.
- What are you to conclude if you are a businessman in the age of Trump?
 - It appears to be a good idea to give Trump money. As has been seen repeatedly, you can get his attention and there is a chance he will do you a favor.
 - Donating to Trump's campaign appears to result in a good return on investment. He has created a major money machine.

WHAT HAPPENS NEXT?

- There are many questions regarding the 2020 election. How will a campaign play out when there may not be rallies or a convention? How can a campaign get voters' attention in the time of a pandemic?
- It is too early to tell how all of Trump's money will work in this election cycle. However, he has rolled out the money machine, and shown that he is ready to use it.

Campaign Finance Law

RICHARD BRIFFAULT

CAMPAIGN FINANCE REGULATIONS are grounded in acts by Congress and rulings by the Supreme Court. Briffault provided an overview of campaign finance's constitutional framework and current issues.

BUCKLEY V. VALEO (1976)

- The Supreme Court case was in response to Congress's Federal Election Campaign Act of 1971. The court decided that the regulation of campaign money triggers a First Amendment Review.
- The Court never said that money is speech. However, raising and spending money is necessary for the dissemination of speech. Having said that the First Amendment applies, the Court made a series of distinctions:
 - Contributions may be limited: though contributions themselves are not campaign speech, they are needed to fund it. Contributions are the fuel that drives the campaign car.
 - Expenditures may not be limited: expenditures are candidates' communications with voters or the money spent preparing to engage in these communications. Equality is not a justification for limiting speech. Spending by self-funded candidates cannot be limited, nor can spending by independent groups.
 - Reporting and disclosure requirements are constitutional: they serve the interest of voter information.
 - Public funding is constitutional: it must be voluntary and it can include spending limits.

CONSTITUTIONAL FRAMEWORK SINCE

BUCKLEY V. VALEO (1976)

- Expenditure restrictions remain invalid. In 2010, the Court expanded the ban on expenditure restrictions to corporations and unions (*Citizens United*). This decision, while important symbolically, has had fairly minimal effects on federal elections.
- Contribution restrictions have remained legitimate. However, the Roberts Court has been much more skeptical of contribution limits. In 2015 the Court struck down the limit on aggregate individual contributions.

CURRENT ISSUES IN CAMPAIGN FINANCE LAW

Disclosure

- The Court has given a green light to disclosure requirements, but federal law has failed to catch up.
- Federal disclosure is limited to groups that engage in electioneering concerning candidates, including SuperPACs.
- A big gap in federal election law has been in electioneering by non-electoral groups, 501(c)(4) organizations. They are required to disclose their spending when they name a specific candidate.
- There is better disclosure at the state level than there is at the federal level.

Public Funding

- There is increased public funding activity at the state and local levels. There is little interest in the defunct federal approaches for presidential primaries.
- *Arizona Free Enterprise Club v. Bennett* (2011) prevents additional funding from going to publicly funded candidates in response to big-spending opposition.
- There is more interest in the New York City model of public funding. The Seattle voucher system still has a lot of unknowns.

Contributions

- More states are moving to set ever-lower limits. This is in stark contrast to the Supreme Court reviewing contribution restrictions.

GAPS IN CAMPAIGN FINANCE LAW

- Foreign money has long been illegal, but it is hard to enforce.
- Internet campaign activity is largely regulation-free. Paid internet and social media ads must be reported, but nothing else. Can this aspect of campaign finance somehow be more regulated?

Money and Power in U.S. Politics

ALEXANDER HERTEL-FERNANDEZ

MONEY MAKES A DIFFERENCE in American politics, policy, and governance at all levels. It is important for the public to pay attention to how money influences elected officials and their policies at the federal, state, and local levels.

UNEMPLOYMENT INSURANCE PROGRAM

- Going into the coronavirus crisis, many states were ill-prepared to deal with the surge of residents in need of unemployment benefits. This is due to many states making deep cuts to their programs in the wake of the Great Recession.
- Over the past decade, states have limited the number of people who have access to unemployment insurance, made it harder to apply for benefits, and shortened the amount of time people can claim these benefits.
- According to a recent Politico analysis, it is expected that many states will be less generous to the unemployed than they were during the Great Recession.
- States with major policy changes, like Florida, Georgia, Louisiana, and North Carolina, have all had major cutbacks in their reciprocity rate (portion of people receiving unemployment insurance benefits).

MEDICAID EXPANSION

- In 2012, the Supreme Court ruled that each state could decide for themselves whether or not to expand Medicaid to nearly-poor individuals under the Affordable Care Act (ACA).
- Several million people live in the 14 states that have not expanded Medicaid under the ACA. Residents of these states end up in the coverage gap—they earn too little to afford a subsidized health plan via state-based marketplaces, work too few hours to get medical benefits through an employer, but simultaneously make too much to qualify for Medicaid.
- As of January 2020, 2.3 million Americans fell into the coverage gap. This number has likely increased because of the pandemic.

TWO BIG CHANGES TO THE SAFETY NET

- Cutbacks to unemployment programs have been politically unpopular. Additionally, the majority of Americans support expanding Medicaid. If voters are not clamoring for these reforms, who is pushing for these cutbacks to the American welfare state?

THE CONSERVATIVE TROIKA

- Three organizations have played a central role in preventing Medicaid expansion.
- State Policy Network (SPN): a network of state-level think tanks and advocacy groups. SPN pressured lawmakers into not expanding Medicaid for political and economic reasons. SPN released testimonies, OpEds, polling, and materials such as toolkits.
- American Legislative Exchange Council (ALEC): an association of lawmakers, private sector companies, conservative activists, and think tanks. ALEC provides legislative resources for state-level elected officials who have limited research capacity. ALEC pressured state lawmakers to not expand Medicaid, especially in Southern hold out states. Many of the key lawmakers that stymied Medicaid expansion were key leaders in this organization.
- Americans for Prosperity (AFP): a grassroots political lobbying force comprised of millions of volunteers on the ground. AFP volunteers go to lawmakers' offices to pressure them to oppose legislation, and AFP runs ads against politicians who support bills AFP opposes.
- SPN and ALEC have many overlapping donors. The money helps the two to coordinate with one another.

WHAT THE TROIKA GETS RIGHT

- Money can really make a difference in politics when it flows through political organizations.
- Organizations with a presence at multiple levels of government, and across states, can have an outsized influence on politics and policy in the United States.
- There are serious problems in the campaign finance system that allow the wealthy to give lots of money that impacts politicians' behavior. However, what happens between elections is equally important. People need to pay close attention to the groups providing ideas and policy research to lawmakers—they can have a major impact on leaders' actions.

The Future of Public Election Funding

MICHAEL G. MILLER

IN THE WAKE OF WATERGATE, Congress built the presidential public funding program to diminish the corrupting influence of money in presidential elections. Miller discussed the past, present, and future of public election funding.

WHAT IS PUBLIC ELECTION FUNDING?

- Broadly defined, public election funding (PEF) is a program in which a political candidate is funded, in total or in part, with taxpayer money. Thus, it is any time a dollar leaves a federal, state, or local treasury of the government to fund a political candidate.
- PEF programs almost always have spending caps. They are a policy instrument intended to limit the amount of money flowing into the system and diminish the role of outside contributor money.

TRADITIONAL DIRECT SUBSIDIES

- In partial funding programs, states set a limit that they find to be a fair representation of a viable campaign, and give candidates a direct payment. This serves as seed money to get candidates going, and then they raise the rest.
- In full funding states, candidates must raise a certain amount of money to demonstrate to the state that they are viable. The state then certifies candidates, and provides them with all the money they need to run. This system guarantees the elimination of private contributions.
- These programs do not appear to diversify the candidate pool based on race, income, or gender. There is little evidence that these programs impact the outcomes of the race. What is accomplished is that candidates have more time to actually interact with voters instead of spending time raising money.

MCCOMISH V. BENNETT (2011)

- Arizona Representative John McComish made a First Amendment claim on an Arizona matching funds provision designed to guarantee financial parity. The provision allowed publicly funded candidates to receive a check anytime another candidate spent over their limit, up to a threshold.
- The Supreme Court struck down the matching funds provisions of Clean Election Programs, as the provisions unconstitutionally hindered the ability to fully exercise First Amendment rights.

NYC MODEL FOR PUBLIC ELECTION FUNDING

- The City Council recognizes that money will come into the system and have an impact no matter what. Instead of trying to keep it out, the City Council channels money to candidates running for municipal office.
- If a candidate for city council can raise \$175 from a single donor, the city will match that 8:1 (\$1,400). Thus, a small donation becomes a very large one. Public funding is limited to 55 percent of the spending limit. This system incentivizes candidates to talk to small donors.
- The NYC model causes a much higher percentage of the aggregate money going into the political system to be driven by small donors, and brings more small donors into the system. This model also shifts the demography of donors to be more representative of voters.
- The model democratizes the campaign finance landscape, and widens racial and socioeconomic representation.

SEATTLE SYSTEM OF DEMOCRACY VOUCHERS

- Each registered voter receives four \$25 vouchers in the mail. The resident decides which candidate(s) to fund. This allows the general public to have some choice without sacrificing any of their own money.
- Early evidence suggests the voucher system may be benefitting incumbents primarily. However, there are a lot of unknowns regarding this model.

THE FUTURE OF PUBLIC FUNDING

- Miller enthusiastically endorses public funding systems, but warns that they are not uncritically good. It is also important to keep in mind that there is still a lot to be learned about public election funding.
- Small donors are more ideologically motivated. In favoring them, elections could become even more polarized.

Question and Answer Takeaways

ATTENDEES HAD THE OPPORTUNITY to ask the panelists questions following the panel discussion.

ANDREA BERNSTEIN:

- We are facing issues of facts and truth. Political advertising has contributed to the erosion of faith in science and facts in general. However, this is not the only cause. The decline of local media and rise of social media has led people to be unsure of the information received.
- There has been a three-year effort by the Trump administration to reduce the influence of scientists and data. During the coronavirus pandemic, we have seen Trump arguing with his own team over whether or not an anti-malarial drug is effective against the virus.
- As a journalist, Bernstein believes it is her duty in life to document facts.
- We are now in the midst of a catastrophe that could push people into two opposing directions.
 - People may move towards more science as they compare and contrast their own experiences to Trump's discourse.
 - People may start to believe in facts even less because of the administration's power.

RICHARD BRIFFAULT

- Voting technologies this year will be a major disaster. Both voter registration and voting itself will require a lot of money.
- Because of the pandemic, volunteers are essentially non-existent. Traditional voter registration mechanisms are all at risk.
- Many of the mechanisms of voting are handled at the state level, and many states have made these processes harder.
- Voting in the 2020 elections will require a lot of equipment, training, and money. Thus, the role of money in politics should be focused on getting more money into the electoral system to help states prepare.

ALEXANDER HERTEL-FERNANDEZ

- For 2020 and beyond, are there groups comparable to the conservative troika that better represent the mass public or progressives?
 - Yes, there has been much more interest in the past three to four years in cross-state organizing on the left. It remains to be seen if that will be sustained.
- There are three broader changes in state-level policy that are important to countering the troika:
 - Changes in the media ecosystem: the decline in journalism has been most acute at the state and local levels. Voters are in a poor position to hold state and local politicians accountable.
 - Changes in the landscape of political participation laws: who has access to the franchise? States are making it harder for people to participate.
 - Role of state-level legislative resources: there are far too few resources with which to make policy.

MICHAEL MILLER

- In this year's presidential election, two things are going to happen simultaneously:
 - A group of states will push hard for mail-in voting based on recommendations from the Oregon model. Oregon has done mail-in voting since the 1990s with evidence suggesting that turnout is up and that voters complete more of the ballot.
 - Many states will resist mail-in voting. A lot of reasons will be given as to why they should not move in this direction, though very few will be valid.
- Misinformation is a major concern when we are not doing face-to-face campaigning.