What Role Should Money Play in American Politics?

The Supreme Court Decision in *Citizens United vs. the FEC* is widely viewed as having opened the floodgates to campaign contributions by corporations, unions and large private donors. However, the truth is more complicated than that.

The following is abridged from Matt Bai's article in The New York Times Magazine, "How Much Has Citizens United Changed the Political Game." July 17, 2012.

It helps first to understand what *Citizens United* did and didn't do to change the opaque rules governing outside money. In 2007, you would have been free to write a check for any amount to a 527—so named because of the provision in the tax code that made such groups legal. (America Coming Together and the infamous Swift Boat Veterans for Truth were both 527s.) Even corporations, though they couldn't contribute to a candidate or a party, were free to write unlimited checks to something called a social-welfare group, whose principal purpose, ostensibly, is issue advocacy rather than political activity. The anti-tax Club for Growth, for instance, is a social-welfare group. So, remarkably, is the Koch brothers' Americans for Prosperity and Karl Rove's Crossroads GPS.

There were, however, a few caveats when it came to the way these groups could spend their money. Neither a 527 nor a social-welfare group could engage in "express advocacy"—that is, overtly making the case for one candidate over another. Nor could they use corporate money for "electioneering communications"—a category defined as radio or television advertising that mentions a candidate's name within 30 days of a primary or 60 days of a general election. So under the old rules, the Club for Growth couldn't broadcast an ad that said "Vote Against Barack Obama," but it could spend that money on as many ads as it wanted that said "Barack Obama has ruined America—call and tell him to stop!" as long as it did so more than 60 days before an election.

Citizens United and a couple of related court decisions changed all of this in two essential ways, and each of them was more incremental than transformational. First, the Supreme Court wiped away much of the rigmarole about "express advocacy" and "electioneering." Now any outside group can use corporate money to make a direct case for who deserves your vote and why, and they can do so right up to Election Day. The second change is that the old 527s have now been made effectively obsolete, replaced by the super PAC. The main difference between a super PAC and a social-welfare group, practically speaking, is that a super PAC has to disclose the identity of its donors, while social-welfare groups generally do not.

Legally speaking, zillionaires were no less able to write fat checks before *Citizens* than they are today. And while it is true that corporations can now give money for specific purposes that were prohibited before, it seems they aren't, or at least not at a level that accounts for anything like the sudden influx of money into the system. According to a brief filed by Mitch McConnell, the Senate minority leader, and Floyd Abrams, the First Amendment lawyer, in a Montana case decided by the Supreme Court, not a single Fortune 100 company contributed to a candidate's super PAC during the 2012 Republican primaries. Of the $96 million or more raised by these super PACs, only about 13 percent came from privately held corporations, and less than 1 percent came from publicly traded corporations.

And the best anecdotal evidence suggests that this kind of thing isn't happening in nearly the proportions you might expect. Kenneth Gross, an election lawyer who represents an array of large corporations, told me that few of his clients contributed to the social-welfare groups engaged in political activity for the 2012 elections. They know those contributions might become public at some point, and no company that sells a product wants to risk the kind of consumer reaction that engulfed Target in 2010, after it contributed $150,000 to a Minnesota group backing a conservative candidate opposing gay marriage. "If you've got a bank on every corner, if you've got stores in every strip mall, you don't want to be associated with a social cause," Gross told me.

None of this is to say that *Citizens United* hasn't had an impact. Gross and others point out that before *Citizens United*, while individuals and companies could still contribute huge sums to outside groups, they were to some extent deterred by the confusing web of rules and the liability they might incur for violations. What the new rulings did, was to "lift the cloud of uncertainty" of such expenditures, and this psychological shift should not be underestimated. It probably accounts for some rise in political money, both from individuals and companies.

Even so, the Supreme Court's ruling really wasn't the sort of tectonic event that some would have you believe it was. "I'd go so far as to call it a liberal delusion," Ira Glasser, the former executive director of the A.C.L.U. and a liberal dissenter on *Citizens United*, told me. Which leads to an obvious question: If Citizens United doesn't explain this billion-dollar blast of outside money, then what does?

Back in the '90s, the most nefarious influence in politics emanated from what was then called "soft money"—basically, unlimited contributions from rich people, corporations and labor unions to both major parties. According to data from the Center for Responsive Politics, in 2000, the last presidential year in which soft money was legal, the two parties raised more than $450 million of it, divided almost equally between them. Only 38 percent of that came from individuals.

That all changed with the passage of the Bipartisan Campaign Reform Act of 2002, popularly known as the McCain-Feingold law. The new law stamped out soft money for good, but it also created a vacuum in political fund-raising. The parties could no longer tap an endless stream of soft money, but thanks to the advent of the 527, rich ideologues with their own agendas could write massive checks for the purpose of building what were, essentially, shadow parties—independent groups with their own turnout and advertising campaigns, limited in what they could say but accountable to no candidate or party boss. Wealthy liberals like Soros and Lewis, along with groups like MoveOn.org, were the first to spot the opportunity. All told, wealthy liberals spent something close to $200 million in an effort to oust George W. Bush in 2004, setting an entirely new standard for outside spending.

Richard L. Hasen, an expert on campaign finance at the University of California at Irvine, recently wrote an article for Slate titled, “The Numbers Don’t Lie,” in which he showed that total outside spending, as measured through March 8 of every election season, seemed to explode after the *Citizens United* decision, reaching about $15.9 million in 2010 (compared with $1.8 million in the previous midterm cycle) and $88 million in 2012 (compared with $37.5 million at the same point in 2008). “If this was not caused by *Citizens United*,” he wrote, “we have a mighty big coincidence on our hands.”

But there are alternate ways to interpret this data. The level of outside money increased 164 percent from 2004 to 2008. Then it rose 135 percent from 2008 to 2012. In other words, while the sheer amount of dollars seems considerably more ominous after *Citizens United*, the percentage of change from one presidential election to the next has remained pretty consistent since the passage of McCain-Feingold. And this suggests that the rising amount of outside money was probably bound to reach ever more staggering levels with or without *Citizens United*. The unintended consequence of McCain-Feingold was to begin a gradual migration of political might from inside the party structure to outside it.

A consequence of McCain-Feingold has been to flip on its head an old truism of politics, which is that incumbency comes with a fixed financial advantage. In the era of soft money, controlling the White House meant that a party could almost always leverage its considerable resources to dominate fund-raising. But today it’s much easier to tap into the fury and anxiety of out-of-power millionaires than it is to amass contributions in defense of the status quo.

Just how much an advantage does all this money actually confer? The greatest impact of outside money was felt on the state level in 2012, where a lot of House seats and control of the Senate hung in the balance, and where a sharp gust of advertising can often blow the results in one direction or another. But a presidential campaign is different, focusing as it does on a dozen or so pivotal states and a limited number of advertising markets.

I recently called Carter Eskew, a longtime Democratic adman and strategist whose clients included Al Gore in 2000, and asked him a simple question: How much did he think he would really need for a candidate today, if he could have an unlimited budget to run a national ad campaign, including all the outside money? Eskew paused before giving a declarative answer: $500 million. Anything beyond that, he said, was probably overkill.

It’s not clear that spending an extra $200 million or $500 million will really make all that much of a difference on Election Day. More likely, the two ideological factions are now like rivals of the nuclear age, stockpiling enough bombs to destroy the same cities over and over again, when one would do the job.

You could even argue that whatever benefit a campaign derives from all this money is balanced, somewhat, by the threat it poses. Back in the days of soft money, a candidate had ownership of his party’s national apparatus and the accusations it hurled on prime time TV. He was responsible for the integrity of his argument, and his advisers ultimately controlled it. What the reform-minded architects of McCain-Feingold inadvertently unleashed, what *Citizens United* intensified but by no means created, is a world in which a big part of the money in a presidential campaign is spent by political entrepreneurs and strategists who are unanswerable to any institution. Candidates and parties who become the vehicles of angry outsiders don’t really have control of their own campaigns anymore; to a large extent, they are the instruments of volatile forces beyond their own reckoning.

Maybe that makes for a cleaner and more democratic system than the one we had before, in the way the campaign-finance reformers intended. It’s just hard to see how.

Two links to consider: The Affluent Ante Up for the Presidency and Analysis: Democracy, Millionaires and Billionaires and More Money, More Democracy.

For a poll about Americans feel about campaign financing today, see: New York Times poll on money in politics.

What’s your view regarding money in politics? Do we need a change or is the current environment OK?

Produced for the Current Issues Club Meeting August 21, 2015 by the CIC Research Team