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Campaign Finance Reform in the United States in the Wake of Citizens United vs. FEC 2010

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CAMPAIGN FINANCE REFORM IN THE UNITED STATES
IN THE WAKE OF CITIZENS UNITED V. FEC 2010

By
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UNDERGRADUATE HONORS THESIS

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“Education is the most powerful weapon which you can use to change the world.”

-Nelson Mandela

Abstract

The Citizens United v. FEC 2010 Supreme Court case confirmed that it was legal for individuals, corporations, unions, and other groups to make unlimited independent political expenditures. Since this ruling, super PACs have played a significant role in national elections in the United States as there are no legal limits on the size of donations they can accept or political expenditures they can make. Due to the growing influence of money in politics, campaign finance reform has become a major issue for 2016 presidential candidates. Conversation about the influence of money in politics has erupted from all ends of the political spectrum sparking a dialogue among Americans about the need for reform. This research explores three proposed alternatives to reforming the current political system after the Citizen's United v. FEC decision. Among the proposed alternatives are propositions for constitutional amendments, citizen funded elections, and laws to take away the lobbying power of corporations and special interest groups. This thesis provides an analysis of the proposed alternatives to Citizens United regarding the feasibility, practicality, and sustainability of each proposed course of action with the common goal of eliminating the corrupting force of unlimited and unrestrained money in the political system.

1. Introduction

1.1. Problem Statement

The Citizen's United v. FEC case of 2010 dramatically changed the way many Federal and Congressional election campaigns are funded in the United States. Although there is still a cap on the amount of money an individual can donate directly to a candidate, the outcome of this case allows individuals, corporations, and labor unions to donate unlimited amounts of money to "super PACs, which act as shadow political parties. They accept unlimited donations. . . [and] use it to buy advertising, most of it negative" (Dunbar). As a result of this decision, wealthy individuals and groups have the ability to influence the outcome of elections more significantly than the average American citizen. This is where the fundamental problem with the Citizens United v. FEC decision arises; big money has become big power, therefore undermining the system of democracy. There have been several alternatives proposed as solutions to respond to this decision, and this thesis will explore three of those alternatives: a referendum presidential candidate, a constitutional amendment via Congress, and a constitutional amendment via a constitutional convention called for by State legislatures.

The main change as a result of the Citizen's United decision was that much of what little transparency existed in campaign financing due to the rise of the super PAC was lost. In the Citizen's United case, "the United States Supreme Court held that the First Amendment prohibited the government from restricting independent political expenditures by a nonprofit corporation. The principles articulated by the Supreme Court in the case have also been extended to for-profit corporations, labor unions and other associations" (Wikipedia Political Action Committee). Essentially, this ruling declared that corporations and unions are "people", and gave them similar rights that individuals have regarding free speech. As it has also been determined

that money is considered speech, and this decision prohibits the restriction of the free speech of corporations and unions. These corporations and unions have been given the right to not have their “speech” regarding support of political candidates regulated or restricted. There are limits on what individuals, PACs, and different committees can donate, and there is a limit on what these groups or candidates can accept. However, super PACs, formally known as independent-expenditure only committees, have no legal limits on what they can accept or spend because they are not technically affiliated with any particular candidate or group. Super PACs work because they do not contribute directly to any candidate or committee, but rather make “independent expenditures” on things such as political attack advertisements that can significantly influence the outcome of elections without coordinating with a candidate or party directly. Although super PACs are banned from working explicitly with a specific candidate or party, one or more super PACs can fuel a campaign without ever coordinating with the candidate by spending the unlimited capital they have in means which can impact public perception of certain candidates. Because the regulations regarding super PACs are often loosely enforced, “some of the candidates’ closest political advisers and managers are now going off to take charge of super PACs, where they manage the unlimited money pouring in for their candidates” (New York Times). Although the American people determine outcomes of elections with their votes, the influence of the super PAC stifles the average American’s “speech” because the average American does not have the expendable capital that super PACs have to back the candidate they support. If a corporation or wealthy individual donates ten thousand dollars to a super PAC, and a middle class working family can only afford to donate ten dollars to a PAC or a candidate, the individual or group that can afford to donate the larger amount of money has the more significant influence and therefore, their “speech” is more influential and important.

1.2. Evidence

Theoretically, any American that meets the age and citizenship requirements is supposed to be able to run for President of the United States. There is a history of Americans supporting candidates that they consider to be especially qualified for the position because they have a background that includes experiences such as law school, a military record, or holding public office for a certain length of time. However, the United States is currently at a point in time where there is another unofficial qualification to be president- the ability to raise or contribute millions of dollars to fund a campaign. As of the end of October 2015, the 2016 presidential candidates [raised] over five hundred million dollars, with super PACs having contributed at least 51% of this (Zubak-Skees). Estimates and projections predict that the 2016 presidential election will cost about five billion dollars, which is about double the cost of the 2012 presidential election. The cost of the presidential election in 1996 was less than five hundred million in total, and there was about \$1.5 million in independent expenditures. (News Releases) That number has risen steadily over the past 20 years, and in the 2012 presidential election, total independent expenditures were about \$1.25 billion (FEC Summarizes). In a New York Times article written at the beginning of October 2015, it was uncovered that only 158 families had contributed about half of the total money that had been raised for the 2016 presidential election, and that they were mostly rich, old, white, Republican men that have stakes in the finance and energy industries (Confessore). When only a small percentage of the American public are able to contribute significantly to super PACs and these super PACs go on to play a crucial role in an election, there arises a great imbalance in the system of democratic election.

One of the major impacts of big money in politics is the rising influence of corporate America in elections and policy. Although Citizen's United did not create this problem, it has

played a major role in enabling it. Some of the major donors in the 2016 presidential election cycle are banks, insurance companies, investment firms, and fuel and energy companies that stand to profit from a decrease in regulation on their respective industry. Deregulation of banks and financial institutions leaves the economy vulnerable and can lead to economic crises such as the 2008 recession, and deregulation of the energy industry has the potential to enable unsafe working conditions and contribute to polluting the environment. What these examples have in common is that in both of these outcomes, profits are privatized whereas risk and loss are socialized. For example, during the 2008 recession, there were huge bailouts of financial institutions which consisted of over \$200 billion dollars in investment from the Treasury Department. These bailouts occurred because the housing market bubble that was growing from 1997 to 2006 finally burst and resulted in the subprime mortgage crisis. The banks' role in this was essentially that they were encouraging homeowners and home buyers to take out adjustable-rate mortgages which they were giving out in huge numbers without seriously considering or anticipating how the state of the housing market and economic climate would impact whether people would be able to pay their loans back. These mortgages were packaged together and sold as mortgage-backed securities which were reduced greatly in value by the economic downturn around 2008, "erod[ing] the net worth and financial health of banks" (Wikipedia Subprime Mortgage Crisis). As the financial system would undoubtedly collapse if the banks were allowed to fail, the government bailed out private institutions that took huge risks with taxpayer money by investing in them even more taxpayer money. Between October 2008 and December 2009, the Treasury Department bailed out 734 banks as part of the Troubled Assets Relief Program (TARP) in amounts ranging from \$301,000 to \$25,000,000,000 for a total of over \$200 billion dollars in investment (CNNMoney).

The individuals that have stakes in these industries are not inherently evil people that want to intentionally harm the economy, pollute the environment, or otherwise be a detriment to society, but rather are business people wanting run their business in the most efficient way to maximize profits and minimize losses. When an institution is deemed “too big to fail” and can expect a government bailout in the event that they face failure, there is little incentive for them to take measures that minimize their losses. The main conclusion that can be drawn from this is that when government unfailingly backs an industry that is vital to the economy, it is in the nature of business to take on risk that may result in huge profits or losses without having to pay mind to the consequences of failure. When a politician’s election or reelection is largely dependent on large donations made by wealthy groups and donors with a stake in a particular industry, it can be inferred that the politician will feel an obligation towards these donors. This may impact how they support or oppose legislation or regulations with regards to that industry, and these regulations have a direct effect on the American people who ultimately bear the socialized cost of deregulation.

As the United States is currently in only the second presidential election cycle since the 2010 Citizen’s United ruling, the influence that the ruling has on the outcomes of elections can be inferred, but causation has not yet been proven. The 2012 election was a re-election year for President Barack Obama who ran against Mitt Romney, whose claim that “corporations are people” provided “one more indication that Romney and the Republicans on the campaign trail and in Washington have misplaced priorities” (Rucker). In the 2016 campaign cycle leading up to the primaries, there were seventeen Republican candidates and six Democratic candidates running for their respective party’s nomination. By the end of October 2015, Jeb Bush, Hillary Clinton, Ted Cruz, Marco Rubio, and John Kasich had each received several million-dollar

donations to super PACs working on behalf of their respective campaigns (Ballhaus). On the contrary, as of January 30, 2016, Bernie Sanders “made American political history . . . by garnering over 3 million donations from more than 1 million individuals averaging about \$27 apiece . . . [and] raised no money from a super PAC” (The Bern Report). Campaign finance reform has become a major issue on the Democratic side in the 2016 election cycle, but only Sanders has actually enforced his ideals by refusing to accept super PAC or billionaire donations whereas Clinton raised almost \$49 million by January 2016 in donations of \$2000 or greater (FEC).

Politicians today spend a significant amount of time fundraising, time that could be spent meeting with constituents, drafting policy, and doing the tasks that the American people elected them to do. In a PowerPoint presentation obtained by media outlets from Congress, it was shown that a typical congressman or woman is expected to spend at least 3-4 hours per day fundraising and making calls asking for donations (Grim). The growing influence of money in politics undermines the system of representative democracy by forcing representatives to take at least half of each work day that they could be dedicating to their constituents, and dedicating it to their donors instead. If all Americans had the resources and ability to make donations to elected officials on a relatively equal basis, this would not be as much of an issue. However, when only a small fraction of Americans are able to financially participate in what has become a race to raise money as much as a race to win the election, the needs of the people are ultimately misrepresented.

Given the enormous impact that the Citizen’s United ruling has had on the way campaigns are financed and the fact that the ruling set precedent, it is difficult to point to a solution that can easily fix or reverse the problem. Those that have the power to fix it are largely

the members of government that are an integral part of the problem because they are central to the system that needs reforming. Some individuals, such as Harvard Law Professor Lawrence Lessig, have advocated the passage of legislation that would reform campaign financing by introducing publicly funded elections. A more permanent way of changing the way campaigns are financed is by passing a Constitutional Amendment, but amending the United States constitution is an extremely difficult thing to do and has only been done a few dozen times. The last constitutional amendment, the 27th Amendment, was first introduced in 1789 and was not ratified until 1992, over two hundred years after it was introduced. Judging by this example alone, it can be seen that while campaign financing is in dire need of reform, it could potentially take hundreds of years to reverse the damage that was done by the Citizen's United case.

2. Proposed Alternatives

2.1. Lawrence Lessig: Referendum Candidacy

One solution to reform the outcome of Citizen's United was proposed by Professor Lawrence Lessig. Lessig's work primarily focused on copyright law until he was approached by a student that convinced him of the need for campaign finance reform. Lessig realized that finding a solution to this core issue was a crucial first step in solving many other issues faced by the United States and therefore began his endeavor into tackling the complex influence and power of money in politics. Lessig argues that money in politics is "the root - not the single cause of everything that ails us, not the one reform that would make democracy hum, but instead, the root, the one thing that feeds the other ills, and the thing that we must kill first" (Lessig, 2). It is important to note that in his analysis of this issue, Lessig is careful to maintain the stance that money itself is not the problem, but rather that money in the "wrong places" can cause doubt about the integrity of the political system.

In regards to the weakening confidence that members of the American public have in elected government officials, Lessig says he “need[s] only to point to the money – money in (what [is] perceived to be) the wrong place – for confidence to weaken. Not ‘money’, but ‘money in the wrong place’. Describe the architecture of incentives, and people will infer the causation” (Lessig, 87). The “architecture of incentives” that Lessig describes fundamentally undermines the United States’ system of government and equal representation because theoretically (and perhaps idealistically), U.S. politicians should be incentivized to do their jobs based on a strong belief in upholding the Constitution and supporting programs and legislation that most positively benefit that politician’s constituents and reflect their needs. However, the way that the political system functions post-Citizen’s United provides loopholes that enable a separate set of financial and other incentives that may conflict with an elected official’s duty to his or her constituents. As Lessig describes, “politics is the art of putting people under obligation to you. Obligation, not expressed in legally enforceable contracts, but in the moral expectations that a system of gift exchange yields” (Lessig, 110). Rather than a system of outright bribery, Lessig describes the current political economy as being a “gift economy”, in which “relationships . . . are the currency . . . and the exchanges that happen within gift economies try to hide their character as exchanges by tying so much of the exchange to the relationship” (Lessig, 108).

One of the major problems with the gift economy, as Lessig points out, is that it creates a dependency that has the inherent potential to inhibit an elected official’s ability to be a fair representative of the people. In a gift economy, individuals might donate to a political campaign or host a fundraiser on a candidate’s behalf under the guise of good faith. Although no bribery or coercion has occurred, it is undeniable that this type of generosity and support would make the

beneficiary feel somewhat indebted to the donor. As Lessig describes it, when a friend gives you a generous gift, you will most likely feel obligated to give them something in return so that the balance of the relationship is restored, and this is the exact logic that applies in the gift economy. The difference between feeling indebted to a friend after receiving a gift and a politician feeling indebted to someone that has contributed to their campaign is that the former scenario affects only two individuals, whereas in the latter scenario, countless individuals may be affected as a result of transactions that they do not have the means or opportunity to be a part of themselves. As the current political system requires a politician or political candidate to contribute or raise substantial funds for their campaign in order to secure election or reelection, it can be inferred that most politicians are not going to refuse to accept significant financial donations. Therefore, there exists a system of politicians receiving large amounts of money or favors with the unspoken understanding that the donation is being given in exchange for some sort of favor or special treatment in the future. The Citizen's United decision has made it possible for individuals of certain social or financial status to individually have the ability to impact the outcome of elections in a more significant and tangible way than an ordinary citizen can impact the outcome of an election with their vote.

The critical component of Lessig's analysis that explains why most Americans are not outspoken about the need for campaign finance reform is that "the great evil that we as Americans face is the banal evil of second-rate minds . . . The enemy is not evil. The enemy is well dressed" (Lessig, 7). His argument is an important one because it asserts the notion that while the issues of campaign finance reform, money in politics, and super PACs are currently harming our political system, a significant portion of the American public does not feel a sense of urgency to fight for reform since there is no "great evil". Lessig uses a comparison of Hitler

and Nazi Germany to argue that when there is a very clear good versus evil situation, a plan of action to reform the situation becomes clear and necessary. However, when the “evil” is not real evil but rather “a corruption crafted by good souls” (Lessig, 7), the plan of action is unclear due to the complex nature of the corruption. It is difficult to convince a people of deeply rooted corruption when the corruption and bribery are actually completely legal.

In his book Republic Lost, Lessig analyzes the issues of money in politics and campaign finance reform in the aftermath of Citizen’s United, and proposes a plan to reform the system. He carried out his plan in 2015, the successes and failures of which will be analyzed later in this thesis. Lessig’s approach to reforming the Citizen’s United decision was extremely unique and included running a political campaign of his own.

In August of 2015, Lessig began putting his name out as an prospective 2016 presidential candidate. He unveiled plans to potentially run for the presidency as what he referred to as a “referendum candidate”. Lessig describes the “referendum president” as having three parts: “it is focused on [taking our democracy] back from the billionaires and corporations, it would be led by a political outsider [without] ties to the system, and it would be self-limiting, [as] once the reform was enacted, the referendum president would step down” (Lessig, The Atlantic). Lessig planned to run for the Presidency with the sole goal of passing a set of reforms known as the Citizens Equality Act of 2017, which outlines plans to guarantee the equal right to vote, the right to equal representation, and citizen funded elections. Once these reforms were passed, he promised to step down as president and relinquish the full power of the presidency to his Vice President. This would ensure that his presidency was a one-issue presidency focused solely on reforming the political system.

Before analyzing Lessig's unique approach towards campaign finance reform, it is important to understand the policy proposals at the core of his plan. Lessig's comprehensive plan for campaign finance reform includes several steps that together form the Citizens Equality Act of 2017. The first piece of this is ensuring that all citizens have an equal right to vote. The plan for this includes passing the "Voting Rights Advancement Act of 2015" which would allow requests for polling stations to be placed on tribal lands (GovTrack), passing the "Voter Empowerment Act of 2015" which "requires each state to make available official public websites for online voter registration" (GovTrack), and additionally "enacting automatic voter registration and turning election day into a national holiday" (Lessig 2016).

The second piece of Lessig's plan is to enact equal representation for all voters by supporting the "Ranked Choice Voting Act" which would "end political gerrymandering and create multi-member districts with ranked-choice voting for Congress" (Lessig 2016). The third and final piece of Lessig's plan is to reform the current system of campaign financing in favor of citizen funded elections. His plan for this is to create a combination of the "Government by the People Act" and the "American Anti-Corruption Act" which would end the influence of big money in politics and encourage small donations. (Lessig 2016). Lessig's main plan for citizen funded elections is to create a system where "each voter has a \$50 voucher or tax credit to donate to a campaign of his or her choice. In exchange campaigns agree to . . . only [accept] donations of \$100 or less" (Matthews).

Once Lessig began publicly speaking about his plans in August, he made the announcement that if his campaign could raise one million dollars by Labor Day he would officially enter his name as a 2016 Democratic presidential candidate. Ultimately, there were

enough citizens willing to contribute small donations that Lessig was able to reach his goal of one million dollars in the month-long timespan.

Lessig's announcement that he was officially running for president was met with mixed reactions. He had firm supporters that made his presidential run possible, but these supporters were largely made up of a core group of people who already viewed campaign finance reform as a crucial issue at the root of all other issues. Many people that were unaware of the issues surrounding campaign finance reform or were unaware of the actual details of Lessig's research and proposed action plan were much more skeptical. In response to this skepticism, Lessig published an essay in The Atlantic on October 17th stating his intention to revise his plans and go "all in" with his candidacy rather than promising to step down once the Citizen's Equality Act was passed. This change came about because "people understood the corruption bit . . . but they didn't get the resigning bit . . . it caught people's attention . . . but it weakened the credibility of the campaign" (Lessig, The Atlantic).

Possibly due to Lessig's unconventional referendum candidacy or the late timing of the announcement of his intention to run, Lessig claims he was not treated like a legitimate presidential candidate by the Democratic National Committee. Lessig maintained the importance of having the opportunity to participate in the Democratic debates, claiming that his participation in the debate would "bring around the recognition of this fundamental issue, [and] that [recognition of the issue] would radically increase its importance to the American public and increase the chances of solving it" (Trickey). The Democratic National Committee has rules about who is eligible to participate in the debates, and Lessig claimed that the committee's original rule that required candidates to be polling at least 1% in the six weeks *leading up* to the debate was changed to require candidates to be polling at least 1% at least six weeks *prior* to the

debate (Trujillo). This rule disqualified Lessig to participate in the November 14th Democratic debate because although he was polling 1% in some national polls, he had not been an official presidential candidate long enough to poll 1% six weeks prior to the debate.

On November 2nd, about two weeks after announcing that he was “all in” as a presidential candidate, Lessig officially dropped out of the race stating that the “only chance to make this issue central to the 2016 presidential election was to be in those debates” (Trujillo). Although Lessig’s initial approach to campaign finance reform was relatively short-lived, his attempt may pave the way for a more well-planned attempt in the future. He did spread the word about the necessity of campaign finance reform, but his inability to participate in the debates stifled the reach of his message.

As Lessig’s approach to campaign finance reform was so short-lived, one can quite easily examine how his plan was executed and critically analyze its successes and failures with respect to future attempts at reforming the political system. Other attempts at reform are much longer ongoing processes that can only be analyzed in terms of the likelihood that the strategy used will produce a positive outcome. Whereas Lessig went the route of an unconventional referendum presidency, a more conventional route towards campaign finance reform is attempting to amend the Constitution. This route has two different paths that can be taken to achieve the same goal of a constitutional amendment. The first is a constitutional amendment via the Congress, and the second is a constitutional amendment via a constitutional convention called for by the states.

2.2. Constitutional Amendment via Congress

The first approach to amending the Constitution has been used for all previous amendments and requires “two-thirds of both the House and Senate to approve the proposal and three-fourths of the states to affirm the proposed Amendment” (Lexis Nexis). Several politicians

have advocated this approach including Democratic presidential candidate Bernie Sanders. On January 21, 2015, Sanders introduced bill S.J.Res.4 to the Senate Judiciary committee to “restore the rights of the American people that were taken away by the Supreme Court's decision in the Citizens United case and related decisions, to protect the integrity of our elections, and to limit the corrosive influence of money in our democratic process” (S.J.Res.4). Sanders has since made this one of the major platforms of his presidential campaign, promising to fight for a constitutional amendment to reform campaign financing as President of the United States. His plans also include fighting for a more transparent campaign financing system and eliminating super PACs with the ultimate vision that an “American democracy should be a nation in which all people, regardless of their income, can participate in the political process, [and] can run for office without begging for contributions from the wealthy and the powerful” (Bernie Sanders). Presidential candidate Hillary Clinton has also promised to support a constitutional amendment to reform Citizens United, stating that she will “push for a constitutional amendment to overturn Citizens United in order to restore the role of everyday voters in elections” (Campaign Finance Reform Hillary Clinton)

There is a general consensus among those in favor of campaign finance reform that corporate influence in politics has become one of the biggest threats to American democracy, however, it is important to note that not all corporations are harmful, profit-hungry entities intent on corrupting American politicians. Some corporations have even come out in strong support of campaign finance reform, including the popular ice cream company Ben & Jerry's. In 2012, Ben and Jerry's launched a campaign called Get the Dough out of Politics in partnership with grassroots organizations Free Speech for People and Business for Democracy. The common mission of this partnership is to “deliver 5 million signatures to Congress calling for a

constitutional amendment to get money out of our elections” (Here's the Scoop). On April 18, 2016, Ben & Jerry’s founders “Ben Cohen and Jerry Greenfield were among approximately 300 people arrested as part of the "Democracy Awakening" protests . . . [to] "protect voting rights [and] get big money out of politics . . .” (Ruggiero). Their commitment to the cause of removing big money from politics is exemplary of the division of corporate America that actively fights against a corrupt system rather than take advantage of it for financial gain. Through the voices of the American people, grassroots organizations like Free Speech for People, and businesses and corporate leaders like Ben and Jerry’s, it is possible that enough members of Congress would get on board with pushing a bill like this through Congress. However, the likelihood of this will be analyzed later in this thesis, as many of these elected officials are the exact individuals that are benefitting from, or at least participating in this broken form of democracy.

Grassroots organizations such as Free Speech for People are strong advocates in the fight for campaign finance reform. This specific organization defines the issue in a more simplistic way than Lessig, stating that as a result of the Citizen’s United v. FEC decision, that “a radical Supreme Court majority is threatening . . . who we are as a nation . . . [a] government of, by, and for the people . . . all of us, not just the wealthy few, and not the corporations” (Free Speech for People). Rather than getting into a complex analysis of how money in the wrong places has the potential to undermine confidence in elected officials, Free Speech for People expresses the view that the power that has been given to corporations as a result of Citizens United is a direct threat to our republican democracy. They state that the solution to this problem is to “get big money out of our politics and end the fiction that corporations have constitutional rights, as if they were people” (Free Speech for People). Like Sanders and Clinton, Free Speech for People is also

calling for an amendment to the Constitution as a solution to overruling the Supreme Court's decision regarding Citizen's United.

Free Speech for People specifically supports two separate amendments which would both curb the influence of money in politics. The first is the "Democracy For All Amendment" including Senate amendment bill (S.J.Res.5, 114th Congress) and House amendment bill (H.J.Res.22, 114th Congress) that would "end the big money dominance of our elections and allow for Congress and the States to set overall limits on campaign spending, including prohibitions on corporate and union spending in the political process" (Free Speech for People).

This proposed amendment has three sections:

"Section 1. To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

"Section 2. Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

"Section 3. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press." (S.J.Res.5, 114th Congress)

The second is the "People's Rights Amendment" including Senate amendment bill (S.J.Res.18, 113th Congress) and House amendment bill (H.J.Res.23, 114th Congress) which "overturns the fabricated doctrine of corporate constitutional rights and restores the promise of American self-government: of, by, and for the people" (Free Speech for People). The specific amendment language for the People's Rights Amendment is as follows:

"Section 1. We the people who ordain and establish this Constitution intend the rights protected by this Constitution to be the rights of natural persons.

"Section 2. The words people, person, or citizen as used in this Constitution do not include corporations, limited liability companies or other corporate entities established by the laws of any State, the United States, or any foreign state, and such corporate entities are subject to such regulation as the people, through their elected State and Federal

representatives, deem reasonable and are otherwise consistent with the powers of Congress and the States under this Constitution.

“Section 3. Nothing contained herein shall be construed to limit the people’s rights of freedom of speech, freedom of the press, free exercise of religion, freedom of association and all such other rights of the people, which rights are unalienable.” (S. Res. 18, 113).

2.3. Constitutional Amendment via Constitutional Convention

A third alternative to campaign finance reform is to amend the Constitution through a Constitutional Convention. This method has never before been used to amend the constitution, but exists as a means for the states to amend the constitution without having to go through Congress. When dealing with an issue such as campaign finance reform that directly involves a corruption of our elected officials, it can be argued that an alternative to bypass Congress becomes necessary. To pass an amendment this way, two-thirds of the states must first call for a Constitutional Convention. The Convention can then propose an amendment, and then three-fourths of the states must approve that amendment (Lexis Nexis). This alternative may not have been used in the past because of how lengthy the process is, and because it would require a majority of the states to agree on the same issue.

One of the leaders of this movement is Wolf PAC, a political action committee founded by Cenk Uyger, founder of the Young Turks online news network. Wolf PAC states as the reasoning behind attempting to pass an amendment through a constitutional convention is that they believe “we can no longer count on our Federal Government to do what is in the best interest of the American people due to the unfettered amount of money they receive from outside organizations to fund their campaigns” (Wolf Pac). Whereas the approach being used by Ben and Jerry’s, Free Speech for People, and politicians like Sanders and Clinton relies on the power of the people and politicians themselves to pressure Congress into passing legislation to reform campaign financing, the approach being used by Wolf Pac eliminates Congress from the process

altogether and instead relies solely on the power of the people and the states to take back democracy from the wealthy and the corporations. Wolf PAC argues that when an issue creates a fundamental distrust of government, the responsibility of reform cannot therefore be given to that government and must be approached differently.

Wolf PAC's plan therefore relies strongly on ordinary citizens to incite reform. They urge volunteers in each state to contact their state legislators with respect to this issue with the goal of getting individual state legislatures to call for an "Article V. Convention for the purpose of limiting the influence that money has over our political process" (Wolf Pac). The ultimate goal Wolf PAC has is this constitutional convention, and they believe that it may not even be necessary for the full two-thirds of states to be on board because Congress may step in if they see that several states are moving towards calling for a convention. In its action plan, Wolf Pac describes the process of how the 17th amendment was passed and how similar the situation was to the current situation of campaign finance reform. They draw a parallel between the 17th and proposed 28th amendments by stating that "when it became clear to Congress that the 17th Amendment was going to happen with or without them, they decided to preempt a convention by proposing it themselves" (Wolf Pac). This outcome would be ideal for Wolf PAC, as it would broadcast the conversation about this issue at a national level and potentially speed up the process of campaign finance reform.

Currently, bills backed by Wolf PAC calling for a constitutional convention have passed in both the house and the senate in four states including California, Illinois, New Jersey, and Vermont. There are six others states in which a bill calling for a constitutional convention have passed in either the house or the senate including Connecticut, Delaware, Hawaii, Maryland, Missouri, and New Hampshire. (Wikipedia Wolf PAC). Wolf PAC was founded in 2011, and

introductions of these bills began in 2012, with the majority of legislation being passed in 2014 and 2015. As two-thirds of states are needed to mandate a constitutional convention, thirty-four states would have to pass bills in both the house and senate for this to occur. In just four years, Wolf PAC has prompted change and progress in about one-third of the states that are required for this convention. As Wolf PAC gains traction in their movement, the possibility of their success seems to be a definite probability, but may still take a significant amount of time. (See Exhibit A, Wolf-PAC's Resolution to Restore Free and Fair Elections in the United States).

3. Analysis of Proposed Alternatives

Each of the three proposed alternatives discussed above has pros and cons when considered individually, but when considered in tandem have potential to enact actual reform. A proposed combination of alternatives will be discussed later in this thesis, but each alternative must first be analyzed to dissect the pieces that have the most potential to generate feasible, practical, and sustainable reform in regards to eliminating the corrupting force of unlimited and unrestrained money in the current political system.

3.1. Lessig's Referendum Candidacy: An Analysis

Professor Lawrence Lessig put forth both a comprehensive analysis of the need for campaign finance reform as well as a comprehensive plan to achieve it. However, once he began to enact his plan, it took only a few months for it to fall flat. Where Lessig had such a well-thought out analysis of the problem of money in politics based in logic and research with a remarkably balanced and objective perspective with regards to the players involved, why did his plan fail so quickly?

There are two major factors that worked against Lessig that doomed his campaign from the start. First, he began his campaign for the presidency much too late which gave him a huge

disadvantage amongst other candidates. Second, his idea for the referendum candidacy failed in its attempt to frame him as humble and altruistic, and instead framed him as someone indifferent and unmotivated, as though he didn't really desire the presidency like the other candidates did. These factors worked together to portray Lessig as a mere academic with no name recognition or experience that was offering to be a martyr for a cause that hadn't yet made its way to the forefront of political discussion.

The first major flaw in Lessig's campaign was the late timing of his announcement to run. Although he announced his intentions to run in August 2015, six months before the first primaries and over a year before the general election, he came much too late in comparison to other candidates. For example, Hillary Clinton announced her 2016 presidential bid in April 2015, a full four months before Lessig. The Clinton family has huge name recognition and an extensive history of political experience and connections. For Lessig to even come close to standing a chance against the Clinton political dynasty, he would have needed to gain significant name recognition before considering a run for the presidency. Considering his unprecedented and non-traditional idea of being a one-issue referendum candidate, it was necessary for him to gain the public's trust before asking to be considered for the nomination for the most powerful position in the world. Even if Lessig had no intentions of winning or coming close to winning the election, he needed to at least become a somewhat recognizable figure in the world of politics to have his message heard and taken seriously.

Second, a major theme in the 2016 presidential election has been the desire for a presidential candidate that is not a "politician", someone from outside the realm of politics that will be "truthful" and "fix" the United States. The difference between Lessig and the candidates that have successfully adopted this persona is the role that ego has played in each candidates'

respective portrayal of themselves. For example, among other reasons, Donald Trump has been so successful because of his hugely inflated ego which blocks his ability to acknowledge that anybody other than him could ever “make America great again”. This intensified and amplified narcissism resonates with Trump’s supporters as the strength, confidence, and boldness necessary to make a successful leader. Most of the other presidential candidates do not display this arrogance and sense of entitlement to the degree that Trump does, but they at least display self-confidence. Lessig’s idea of the referendum candidacy fails this basic unwritten qualification to secure the presidency: the *desire* to be President and the ability to convince the American public that you’re the right person and the only person for the job. When he announced that he would step down and relinquish the power of the presidency, he inadvertently made himself seem expendable with his lack of even a small shred of the egotistical fervor that even the most amicable and compassionate presidential candidates possess to some degree. When the United States is at a point in time where a significant portion of the voting population is looking for a strong leader to change the course of the nation, why would they elect or consider electing a candidate that plans to step down as president before even announcing their presidential bid?

Despite the factors that led Lessig to fail in his attempt at becoming a referendum candidate, pieces of his proposed Citizens Equality Act of 2017 are feasible, practical, and sustainable solutions for campaign finance reform if implemented correctly. The main ideas that we could take from Lessig’s plan that could potentially be packaged into something that a majority of the American public might support are 1) passing legislation to end gerrymandering, and 2) implementing citizen funded elections via a tax voucher. These pieces of his plan are ideas that could garner bipartisan support, and therefore might be more feasible. The reason these ideas have the potential to garner bipartisan support is because they are ideas that are big enough

and broad enough to be understood by and relevant to a significant portion of the American people. They are also ideas that arguably would not cost the people or the government a significant amount of money. Although the United States observes religious holidays such as Christmas and Easter, voting days in presidential elections are not regarded as federal holidays and therefore not all of the voting population has the opportunity to vote. Opposition to making election day a national holiday is generally due to arguments regarding the cost for the country to shut down business for an entire day.

3.2. Constitutional Amendment: An Analysis

3.2.1. Constitutional Amendment via Congress: Analysis

An amendment to the United States Constitution is undoubtedly the most permanent and infallible way to reform the system of campaign financing, but is also the most difficult method because of the complex nature of the process. The first way that the Constitution can be amended requires “two-thirds of both the House and Senate to approve the proposal and three-fourths of the states to affirm the proposed Amendment” (Lexis Nexis). Amending the Constitution is not something that is done often, and in fact, only ten of the twenty-seven Constitutional amendments have been ratified within the last century. Approval by a two-thirds majority in both the House and the Senate today would likely require either a significant party majority in Congress with that majority party agreeing unanimously on the issue, or strong bipartisan support of the issue. Furthermore, for the amendment to be ratified by three-fourths of the states, it would have to be an issue that a majority of the states would agree on. According to the latest Gallup tracking, fourteen states lean Democratic or are solidly Democratic, whereas twenty states lean Republican or are solidly Republican; the remaining sixteen states are competitive states such as New Hampshire, Iowa, and Florida (Gallup). Thirty-eight states are currently

needed to ratify any amendment to the Constitution, and in the current political climate, neither party is represented with enough majority to ratify an amendment based on a one-sided issue.

The purpose in discussing this is to show that the first essential step in any plan for campaign finance reform is to bring the issue to the forefront of bipartisan political discussion and make it a key issue. A Constitutional amendment cannot succeed if based on a one-sided issue because of the strong divide in beliefs and values among the parties today. Take for example the Republican party's vow to block any judicial nomination President Obama should make to replace Justice Scalia on the Supreme Court. It is not entirely clear whether the Senate judicial committee truly believe as they state in their February 23rd letter to Senate Majority Leader Mitch McConnell that "[the United States is] in the midst of a great national debate over the course [the] country will take in the coming years" and that it would be irresponsible to appoint a new Supreme Court justice given the political climate, or whether they are simply intent on blocking the nomination in order to save that nomination power for a potential Republican presidential candidate (Herszenhorn). However, whatever the true reasoning is, we can use this major national issue as an example of the lack of unity and cooperation in the current state of politics in the United States. Whereas Democrats and Republicans have very different perspectives on major platform issues and things like judicial nominations that could potentially impact those platform issues, campaign finance reform is something that affects entire economic classes of people the same way regardless of political affiliation as it represents a strong divide between the American middle class and the classes of millionaires, billionaires, and corporate entities. Campaign finance reform is not a question of differing beliefs like those regarding tax allocation or military spending, but a question of whether the American middle class wants to continue living in a country where corporations can essentially buy the politicians that have the

power to actually change and create the laws regarding those issues that the American people feel so strongly and so differently about. It is impossible to have a debate about the issues if a significant portion of the American people are having their voices and opinions drowned out by the corporate and big money entities that are controlling elections. If a significant majority of the American population no longer found the issue of campaign finance reform as “banal” as Lessig describes, and regarded it as one of the most important, if not *the* most important, issues facing the United States today, the constant battle between Democrats and Republicans might not stand in the way of ratifying an amendment that would take back American democracy and return the power of election back to the people. Differing beliefs and opinions and the ability to agree, disagree, and enact change makes politics in the United States both wildly frustrating and fascinating to watch, but the ability to unite as one voice, the voice of the people, is realistically the only way that a constitutional amendment could get passed by taking the traditional route of trying to pass it in Congress.

3.2.2. Constitutional Amendment via Constitutional Convention: Analysis

The method of bypassing Congress and attempting to pass a Constitutional amendment through a Constitutional convention has pros and cons that the traditional method of going through Congress does not have. The major benefit of eliminating Congress from the process is that this theoretically eliminates the corrupted force from controlling its own fate. In other words, politicians in Congress that have financial ties to corporations would not be a part of the decision to eliminate those ties, which would potentially make the process more feasible because the bias in favor of the corporations would be stifled.

However, it can be argued that while this method of trying to pass a constitutional amendment might be more feasible, it might not be the most practical solution because of how

lengthy the process could be. The Constitution has never been amended through a constitutional convention, so although this is a method that is permitted in the constitution, it is fairly unprecedented and therefore there really is no way of knowing how the process works in practice or analyzing the likelihood of it happening. As previously discussed in section 2.3., four states have passed bills in their state legislatures calling for a constitutional convention. However, there is no guarantee that the thirty-four states needed to call for this convention will follow suit in the near future. While this method might be the best way to go about trying to pass a constitutional amendment by bypassing Congress, there is no telling how long the process could take and there is no telling how much damage could be done to our political system by unfettered money in politics in the meantime. This might be a more practical solution if there was more of an indication that a majority of the states would be interested in something like this.

It is important that even though the thirty-four states needed to call a constitutional convention may not be on board, the pressure on Congress from the states to take action on this could still bring about change. It is not unprecedented that states have begun this process of attempting to call for a convention and Congress has come out in front of the issue and taken it on themselves, eliminating the need for the convention altogether. This would be a necessary part of a comprehensive plan for campaign finance reform.

4. Recommended Proposition for Campaign Finance Reform

Considering the alternatives that have already been proposed to reform campaign financing the question comes down to which alternative, if any, is the most feasible, practical, and sustainable plan? Upon analysis of the problem and proposed solutions, I conclude that a constitutional amendment is the most desirable approach to long term campaign finance reform because of its permanence and sustainability. I would argue that there is no single course of

action that on its own will bring about the kind of reform that is needed because although there are many proposed solutions and methods of achieving reform, the implementation of these plans in the current political atmosphere in the United States is much more complex. Instead, a combination of several alternatives and plans enacted in the right political environment would have the potential to make this change.

First, this has to become a bipartisan issue that a significant majority of the American public are at least aware of. If the American public is not lobbying for campaign finance reform, it will most likely never happen because the individuals in positions of political power are at the core of this unique issue and therefore stand to lose a lot by passing this kind of reform. If many constituents from every state began actively calling and writing to their senators and representatives, these individuals would feel at least some pressure to act. Although politicians need donors to fund a campaign, they still need their constituents to vote for them to get elected and re-elected. The current political atmosphere in the United States is also extremely divided in terms of fundamental beliefs and principles, the severity of which has been highlighted by the 2016 presidential race. Although there are individuals and groups at all ends of the political spectrum having intelligent dialogue about the course the nation will take, there are equally as many strong supporters on the conservative and progressive sides that vehemently stand against the opposition for the sake of stubbornness and ignorance. This suggests that garnering bipartisan support for this issue may be extremely difficult, but it also highlights the importance of uniting political parties for the common goal of salvaging the fundamental system of American Democracy which enables Americans to have these different views and debate policies and principles freely without threat of corporate and wealthy powers undermining that system.

Second, similarly to making this a widely known bipartisan issue, constituents in each state should continue calling their state legislators asking them to call for a constitutional convention. The template provided by Wolf-Pac (Exhibit A) is a thorough and adequate starting point for state legislatures to use in drafting a state legislative resolution to call for a constitutional convention. Although the process of calling for a constitutional convention is an extremely time consuming process that relies heavy on grassroots activism, would add a layer of pressure from the states on Congress if constituents are lobbying for this action and the state legislatures are simultaneously acting on their behalf. This action by the people and the states has a dual purpose of working towards a constitutional convention with the goal of passing an amendment for campaign finance reform, and also building a movement of mounting pressure for Congress to act on its own to introduce this amendment.

Third, pressure also needs to come from the executive branch. This is possibly the most vital part of this plan, because the executive branch has the national platform that average citizens and grassroots activists do not. Grassroots activists do not get the media attention that political figures do, especially when their efforts are targeting towards removing money from politics which is a major factor in the relationship between media outlets and political figures and the type of access news organizations have to important politicians. The President of the United States has the power to use his or her national platform and media access to make campaign finance reform a national household issue and constantly stress the its importance to the American people. With a combination of pressure from the states and the executive branch, the likelihood of Congress acting to find a solution to campaign finance reform increases greatly because they are being called on to act from every angle.

Lastly, Congress would need to draft a proposal for both a constitutional amendment, as well as accompanying legislation to reform campaign financing. The constitutional amendment would reform Citizens United, making it so that corporations and wealthy individuals could no longer make unlimited campaign contributions. It would eliminate the super PAC entirely and would pave the way for citizen funded elections. I would recommend using the language introduced in the proposed “Democracy for All Amendment” because it thoroughly reforms the outcome of Citizens United by allowing Congress and the States to set limits on political spending and also removes the possibility of corporations having the same political and free speech rights as natural persons. Accompanying legislation that Congress should draft should include specific limits on campaign contributions, and I would recommend for this that they introduce a form of citizen funded elections such as the system that Lessig proposes in the form of small but equal tax credits for all Americans so that candidates are still able to raise money to run their campaigns but there is no longer an imbalance in who is able to more strongly influence elections.

5. Conclusion

This thesis explored the problem of the current system of campaign financing in the wake of Citizen’s United v. FEC and three proposed alternatives to reforming this system. After an analysis of the problem and alternatives, I conclude that campaign finance reform is an extremely complex issue, however it is not finding a solution to the problem that is difficult, but rather it is the implementation of a solution that proposes many challenges. The long-term solution to campaign finance reform can seem daunting, and the question arises of whether it is worth it to attempt to tackle the problem. Although there are many obstacles and challenges that must be overcome to ultimately pass a constitutional amendment for campaign finance reform, it

is absolutely worth it because the fundamental system of American democracy is currently being undermined by the current way in which the system is functioning, which has led to a weakening confidence in political figures to be equally representative of constituents as they are corporate and wealthy individuals and groups. Although there is a great imbalance of ideas and beliefs in the current political atmosphere, the common goal needs to be to restore the system of democracy that enables healthy debate and progress and that serves the people rather than a small fraction of the wealthiest individuals.

6. EXHIBIT A: Wolf-PAC Template for State Legislative Resolution

“State Legislative Resolution to Restore *Free and Fair Elections* in the United States

“Applies to Congress for a limited amendments convention for the purpose of proposing a Free And Fair Elections Amendment to the United States Constitution

“WHEREAS, the 1st President of the United States George Washington stated, “The basis of our political systems is the right of the people to make and to alter their Constitutions of Government.” and,

“WHEREAS, it was the stated intention of the framers of the Constitution of the United States of America that the Congress of the United States of America should be "dependent on the people alone." (James Madison, Federalist 52); and,

WHEREAS, that dependency has evolved from a dependency on the people alone to a dependency on those who spend excessively in elections, through campaigns or third-party groups; and,

“WHEREAS, the United States Supreme Court ruling in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) removed restrictions on amounts of independent political spending; and,

“WHEREAS, the removal of those restrictions has resulted in the unjust influence of powerful economic forces, which have supplanted the will of the people by undermining our ability to choose our political leadership, write our own laws, and determine the fate of our state; and

“WHEREAS Article V of the United States Constitution requires the United States Congress to call a convention for proposing amendments upon application of two-thirds of the legislatures of the several states for the purpose of proposing amendments to the United States Constitution; and

“WHEREAS the State of [your state] sees the need for a convention to propose amendments in order to address concerns such as those raised by the decision of the United States Supreme Court in Citizens United v. Federal Election Commission (2010) 130 S.Ct. 876 and related cases and events including those occurring long before or afterward or for a substantially similar purpose, and desires that said convention should be so limited; and

“WHEREAS the State of [your state] desires that the delegates to said convention shall be comprised equally of individuals currently elected to state and local office, or be selected by election, in each Congressional district for the purpose of serving as delegates, though all individuals elected or appointed to federal office, now or in the past, be prohibited from serving as delegates to the convention, and intends to retain the ability to restrict or expand the power of its delegates within the limits expressed above; and

“WHEREAS the State of [your state] intends that this be a continuing application considered together with applications calling for a convention passed in the 2013-2014 Vermont legislature as R454, the 2013-2014 California legislature as Resolution Chapter 77, the 98th Illinois General

Assembly as Senate Joint Resolution No. 42, the 2014-2015 New Jersey legislature as SCR 132, and all other passed, pending, and future applications until such time as two-thirds of the Several States have applied for a convention and said convention is convened by Congress;

“Therefore, be it Resolved, that the people of the State of [your state] speaking through its legislature, and pursuant to Article V of the United States Constitution, hereby petitions the United States Congress to call a convention for the purpose of proposing Amendments to the Constitution of the United States of America as soon as two-thirds of the several States have applied for a convention; and

“Be it further Resolved, that the Chief Clerk of the [your state] [*House of Representatives or Senate*] transmit copies of this resolution to the President of the United States; the Vice President of the United States in his capacity as presiding officer of the United States Senate, the Speaker of the United States House of Representatives, the Minority Leader of the United States House of Representatives, the President Pro Tempore of the United States Senate, to each Senator and Representative from [your state] in the Congress of the United States with the respectful request that the full and complete text of this resolution be printed in the *Congressional Record*, to the presiding officers of each legislative body of each of the several States, requesting the cooperation of the States in issuing an application compelling Congress to call a convention for proposing amendments pursuant to Article V of the U.S. Constitution.”
(Resolution to Restore Free and Fair Elections)

7.

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