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**Restriction vs. Empowerment:
The Trajectory of Campaign Financing, Constitutional Problems, and a Solution**

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*When Ben Franklin walked out of Independence Hall, the work of the Constitutional Convention completed, he was stopped by a woman and asked, “Mr. Franklin, what have you wrought?” “A Republic, madam,” Franklin replied, “if you can keep it.”... We have lost that Republic. We must act to get it back—Lawrence Lessig in *Republic, Lost* (2012).¹*

Political parties are traditionally defined as tripod institutions: they consist of 1) the party in the electorate (voters and identifiers who have a sense of loyalty to the party), 2) the party organization (party officials, committee-members, volunteer workers, and paid staff), and 3) the party in government (the elected officials and candidates).² The principal role of political parties in democracy is to bridge the gap between the electorate and the legislature across the country to bring “the People’s voice” to the government. For example, in the early 19th century Martin Van Buren, the founder of the prototype of the Democratic Party, advocated a radical theory of the political party in American constitutional democracy. He argued that the will of the electorate should be expressed through one party, and the party should represent “the people” as a whole, rather than manifesting different factions in the population with several distinct parties.³ Based on his theory of party-centric democracy, he designed the political party so that it de-emphasized policy agenda.⁴ In Van Buren’s theory, what makes democracy *legitimate* was that the legislature reflects “the People’s voice.”

However, parties in the past century should rather be understood as coalitions of interest groups and activists trying to capture and use government for their particular goals, which range from materialistic self-interest to high-minded idealism. The coalition of

¹ Lessig, Lawrence. 2011. *Republic, Lost*. New York: Twelve, 317.

² Bibby, John. 1996. *Politics, Parties, and Elections in America*. Chicago: Nelson-Hall Inc., 5.

³ Leonard, Gerald. 2014. “Jefferson’s Constitution” (Draft Paper), in *Constitutions of the Classics: Patterns of Constitutional Thought from John Fortescue to Jeremy Betham*, ed. D.J. Galligan. Oxford: Oxford University Press, 2.

⁴ Heberlig, Eric and Bruce Larson. 2012. *Congressional Parties, Institutional Ambitions, and the Financing of Majority Control*. Ann Arbor: The University of Michigan Press, 25.

interest-seeking groups develops an agenda of mutually acceptable policies, competes in the nomination of candidates, and works to elect these candidates to office by using significant financial resources.⁵ Especially in the past few decades, the support from such coalition became almost indispensable to the success of the party members both on the way to Congress and in their promotion within the parties in the legislature due to the changes in electoral, political, and technological conditions over the past century. In other words, members of the parties nowadays are increasingly dependent on these interests—the politicians in Congress are not dependent on “the People,” but more so on the rich donors and wealthy corporations that give money to their campaigns. At the same time, party organizations, which have become more collaborative with each other than ever before, magnify this process of regulatory capture. The party in Congress too, together with party organizations, is starting to function as a top-down, “machine-like” entity that produces favorable results for these donors and corporations.

The drafters of the Constitution might have predicted this dynamic back in the 18th century—indeed, they despised the idea of political parties dominating in the national politics and government. Accordingly, the drafters designed the Constitution in a way that structurally impedes the formation of powerful and highly organized national parties and factions. Federalism, bicameralism, separation of powers, checks and balances,⁶ large districts for House members, long terms for Senators, an executive veto, and judicial review,⁷ among all other structural devices, were all the drafters’ attempts to frustrate the organization of dominant parties or faction.⁸

⁵ Kathleen Bawn, Martin Cohen, David Karol, Seth Masket, Hans Noel, and John Zaller. 2012. “A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics, Perspectives on Politics.” *Perspective on Politics* 10(3), 571.

⁶ Kommers, Donald P., John E. Finn, and Gary J. Jacobsohn. 2010. *American Constitutional Law: Essays, Cases, and Comparative Notes*. Lanham: Rowman & Littlefield Publishers, INC., 394.

⁷ Leonard, 1.

⁸ Kommers, et al., 394.

Their scheme was initially successful. For example, the national parties in Congress had originally been only loose coalitions of members with many different interests, lacking a central authority to organize or aggregate their votes in Congress. The organization of American political parties also embodied the concept of “separation of powers.” Since the 1860s, congressional party organizations also have had separate organizations to support presidential election and elections for the House of Representatives. Since 1913, when passage of the 17th amendment, requiring direct election for Senate, was added to the Constitution, separate organizations were formed for both parties’ Senatorial elections. As a result, there were six separate national party organizations in the U.S.: the Republican National Committee (RNC) and the Democratic National Committee (DNC) for presidential campaigns; the National Republican Campaign Committee (NRCC) and the Democratic Congressional Campaign Committee (DCCC) for House elections; and the National Republican Senatorial Committee (NRSC) and the Democratic Senatorial Campaign Committee (DSCC) for Senate.⁹ Despite the fact that they belonged to the Democratic Party or Republican Party, each party’s committees had little incentive to collaborate with each other. This was because of the different terms of the office across the departments and the dissimilar nature of victory between presidential election and elections to the legislature—the former an all-or-nothing competition, the latter about winning or controlling majority status. Because of these differences, the committees of the two major U.S. parties historically had more conflicts than cooperation with each other. However, this earlier trend started to change significantly in the 1990s, responding to the changing dynamics in the electoral and political climates.¹⁰

⁹ Kolodny, Robin and Diana Dwyre. 1998. “Party-Orchestrated Activities for Legislative Party Goals: Campaigns for Majorities in the US House of Representatives in the 1990s.” *Party Politics*, 4(3), 274-276.

¹⁰ *Ibid.*, 276.

Accordingly, the series of campaign financing regulations over the past century have aimed to weaken the dependency of congressional members on their donors. With regulations that limited contributions from each donor, reformers tried to disperse the monetary influence, or more accurately, “seemingly” powerful money that affects the members of Congress. In a way, they were trying to “democratize” the legislative process in Congress by capping the influence of affluent citizens and entities in elections. The more diverse and disparate the candidates' dependence on their donors is, the more “democratic” the campaign process can become, because such diversified and widely-scattered donors are much closer to “the People,” than just rich donors and corporations. However, the consequences of the campaign regulations tell us that the reformers’ efforts do not really carry the result they wanted. Regardless of Congress’ efforts to “democratize” the process of campaign financing, it either produced unwelcomed side effects or motivated the party members and their donors to find or engineer new ways to get around the regulations and attain what they need via their monetary influence. Furthermore, U.S. Supreme Court rulings do not always support the campaign regulations. In fact, it was the Court’s ruling in *Citizens United v. Federal Election Commission* (2010) that caused the creation of quasi-party organizations that are free from the campaign finance regulations— the “Super PACs.”

Given these dynamics, this paper will sketch out the trajectory of congressional campaign financing in the United States and its consequences along with the constitutional, regulatory, political, electoral, and technological changes, explaining their implications for the activities of the party members in Congress. In particular, I will focus on how political parties and Congress developed their dependence on monetary sources, primarily individual donors and interest groups, and later on Congressional incumbents and party organizations. Although such dependency may *not* be a clear quid pro quo relationship, which the Court argued in *Citizens United* as the only relationship that is constitutionally justifiable for the

government to intervene, I will argue that it should still be regarded as a kind of corruption that the government can justifiably regulate. Such dependency causes so-called “dependency corruption,” which develops under the heavy influence of financial contributors and shifts Congress’ dependency from its proper focus— from “the People” *alone*, as *Federalist No.57 indicates* — to an inappropriate focus.¹¹ Yet, given the series of failures of campaign finance regulations in reducing dependency corruption, and the recent Court rulings, it would be ineffective or unrealistic for the government to further advance their restriction-based approach as a remedy to the current system. Provided these issues, I will introduce a potential solution that is based on a different principle: an approach of “empowerment,” *not* restriction.

This paper is comprised of the following parts: Part 1 explains the rise of candidate-centered campaign financing and the increasing dependency of the members of Congress on individual donors and interest groups, by special focus on the non-party-oriented factors, such as constitutional and technological changes and the structurally growing importance of campaign money. Part 2 will focus more on the internal institutional changes of party organizations and the parties in Congress, describing the rise of the top-down party institutions. Part 3 will briefly explain the emergence of Super PACs and its implication. Part 4 specifies the constitutional problems in the current system of campaign financing, and based on the information and history of campaign financing, this section will suggest a remedy for the system.

Part 1— The Influence from Outside: The Party-Exogenous Factors that Impacted the Congressional Campaign Financing

Historically, national parties were loose and weak organizations, in terms of their influence over members, ability to raise funds, and assisting their candidates’ campaigns. Moreover, the regulatory changes from the Progressive era to the mid-1970s have further debilitated

¹¹ Lessig, Lawrence. 2010. “Democracy After Citizens United.” *Boston Review*.

their influence. In the light of their incompetence, congressional campaigns are showing strong candidate-centered features, such as campaign management and media advertisement, but especially in campaign financing. Campaign financing has become an important issue as campaign costs skyrocketed throughout the past half century, due to technological development and changes in political environment. Accordingly, the donors and interest groups that fuel candidate-centered campaigns obtained influence in legislative outcomes in Congress. This chapter sketches out the changing dynamics in Congress, especially focusing on factors and actors outside of political parties— chiefly constitutional amendments, regulatory changes, technological development, and campaign donors.

① The Progressive Reformers, Changing Campaign Forms, and the Rise of Candidate-Centered Campaign Financing

Traditionally, American political parties had a large organizational influence over their members. Their influence originated in their extensive role in elections, campaigns, and worker hiring processes for the government. In the nineteenth century, local party organizations determined which candidates ran for office, they ran campaigns, and they controlled volunteers and finances for their political activities. As for the worker hiring process, they hired activists and raised funds from the people in exchange for jobs, contracts, or social benefits. Thus, those who wanted a government job or contract paid the party to get it.¹² Because of these roles, party organizations' power over their members was quite strong during the late nineteenth and early twentieth centuries. They even had the power to request and receive regular contributions from members of Congress.¹³ Accordingly, they demonstrated a strong, top-down style, control over their members.

¹² Heberlig and Larson, 25.

¹³ Ibid., 25-26.

However, it was usually the local party organizations that received the funds, rather than the national party organization. The congressional campaign committees were much less successful in raising funds. During this era of strong parties, state and local party organizations were more powerful than the national party organizations, since they controlled the nomination of candidates and the means of mobilizing voters and resources.¹⁴ For most of the twentieth century, national party organizations were simply loose coalitions of many different factions. They did not have a mass membership base or a fixed national constituency of donors. Indeed, they struggled to raise funds for themselves.¹⁵

This trend started to change when the series of Progressive reforms from the late nineteenth century to the early twentieth century removed the power from party organizations at national, state, and local levels.¹⁶ Especially notable in the early Progressive reforms was the Pendleton Civil Service Act of 1883, which limited the ability of parties to raise funds from government workers and contractors. It introduced merit-based hiring principles in government employment, as opposed to employment on the basis of political affiliation. It also prohibited the “assessment” system, based on government employees’ financial contributions to the party organizations— soliciting political donations to the party from federal employees, which, by then, had grown to be one of the main means for parties to raise funds. In the wake of the financial losses created by the civil service act, rising big business— such as railroads, banks, steel, and oil companies—became the principal financial donors for political parties during the Progressive era.¹⁷ In 1907, when federal law banned corporate contributions, party organizations relied mainly on their traditional source of

¹⁴ Ibid., 25-26.

¹⁵ La Raja, Raymond. 2008. *Small Change: Money, Political Parties, and Campaign Finance Reform*. Michigan: University of Michigan Press, 119.

¹⁶ Heberlig and Larson, 27.

¹⁷ Ibid., 27.

funding— wealthy individuals.¹⁸ As a result of these Progressive prohibitions on party-centered campaign financing, national party organizations could only slowly develop themselves as stable campaign organizations.¹⁹ Regulation extended to the parties as money became increasingly important in politics and elections and the role of national politics became progressively larger in people’s lives.²⁰

Also, the nationwide ratification of the 17th Amendment in 1913 introduced direct primaries of U.S. senators for the first time. Prior to the 17th Amendment, state legislatures elected senators. However, several problems emerged toward the late 19th century, as Senate vacancies lasted months, or even years, due to the impasse between several state legislators over the election of senators. In other cases, political parties took control of state legislature, and senators who were elected with their supports were simply made into their puppets.²¹ Those problems motivated the House of Representatives to make the Senate more directly accountable to the people. Accordingly, the provision for direct election of senators was included into the 17th Amendment in 1913.²²

This constitutional change deprived party leaders of their nominating power of Senate candidates and created a way for candidates outside the traditional party leadership’s control to rise to power. By winning a direct primary, such candidates could now gain access to the general electorate without organizing a third party or playing internal party politics.²³ Due to the 17th Amendment, the control of the candidate nominating process has shifted radically

¹⁸ Baker, Paul. 2002. “Campaign and Potato Chips; or Some Causes of Consequences of Political Spending,” *Journal of Political History*, 14(1), 19.

¹⁹ La Raja, 39.

²⁰ Heberlig and Larson, 27.

²¹ “17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators,” National Archives.

²² *Ibid.*,

²³ Bibby, 41.

from the hands of the party organizations to those of the electorate—the party leaders lost their effective leadership power.²⁴

The diminished party organizations' role in control over its members as well as their shrinking ability to financially assist their members in elections forced candidates to figure out their own way to protect their incumbency or way to make it to Congress on their own. Incumbents constructed their personal political organizations and funded their campaigns—which were still inexpensive grassroots activities, at least until the 1960s. Candidates during this time raised funds largely from organized groups within their constituencies.²⁵ This marked the dawn of the candidate-centered system in American politics.

There are several more causes for the rise of candidate-centered system in American politics. One of them is the absence of required regular payment by party membership, so-called “party dues.” In contrast with political parties in most other countries, you only need to fill out a form or to take a party ballot during a primary election in order to “join” a party in the United States. Patronage hiring and firing, which once played the same role as that of membership dues in other countries, violates the 5th Amendment, according to several Supreme Court cases in the late 1900s.²⁶ Lack of party dues and the absence of the party's organizational power to choose the parties' nominees altogether made institutional ties among the American political party members less tight than those in European countries.²⁷

²⁴ Corrado, Anthony. 2005. “Money and Politics: A History of Campaign Financing Law.” *New Campaign Finance Reform Sourcebook*, ed. Norman J. Ornstein and Thomas E. Mann. Washington DC: Brookings Institution, 8-10.

²⁵ Salmore, Barbara and Stephen Salmore. 1989. *Candidates, Parties, and Campaigns, Electoral Politics In America Second Edition*. Washington DC: Congressional Quarterly Inc., 47.

²⁶ See *Elrod v. Burns*, 427 U.S. 347 (1976) (banning patronage firing); *Branti v. Finkel*, 445 U.S. 507 (1980) (banning patronage firing where party affiliation was not required for effective performance of office); *Tutan v. Republican Party*, 497 U.S. 62 (1990) (doing the same for public employees); *Bd. of Cnty. Comm'rs v. Umbhr*, 518 U.S. 668 (1996) (banning patronage decisions in the transfer and promotion of independent contractors).

²⁷ Pildes, Richard. 2015. “Romanticizing Democracy, Political Fragmentation, and the Decline of American Government.” *The Yale Law Journal*, 15(2), 813.

In light of the diminished support from the national party organizations and the increase in split-ticket voting in the 1960s, congressional candidates have found it increasingly necessary to hire their own research and media professionals. Accordingly, the number of campaigns using their services grew steadily. In 1962, 168 campaigns involved professional consultants; two years later the number became 280; in 1968, the number rose to 658.²⁸

Along with the evolution of candidate-centered campaign management, the form of the congressional campaign was going through a dramatic transformation. The emergence of electronic mass media, for example, radically transformed the way in which political campaigns were run. The development of media and information technology became one of the major forces that unraveled parties' organizational authority and effective control. With new media technologies, individual officeholders could reach out to a large body of potential voters and donors in ways that were simply impossible previously.²⁹ They were able to build personal brands without the party label. Party leaders could not simply control or shut down these new channels of access to direct communication with voters and donors.³⁰ Especially in the light of the declining partisan loyalty among voters, the personal characteristics of congressional candidates became more appealing to the general electorate than it had been before.³¹

The increasing media use, more developments in campaign technology, the growing suburbanization of the electorate, and the increasing use of highly costly political campaign consultants, which all happened in the mid-to-late 1900s, altogether have inflated congressional campaign costs.³² For example, the median expenditure among all candidates

²⁸ Salmore and Salmore, p. 48.

²⁹ Pildes, 834.

³⁰ *Ibid.*, 834.

³¹ La Raja, Raymond. 2013 "Why Super PACs: How the American Party System Outgrew the Campaign Finance System." *The Forum* 10(4), 96-97.

³² Heberlig and Larson, 30.

in House campaigns, in 1976, was about \$53,384; in 1998, the figure became \$552,464; and this skyrocketed to about \$1,093,405 in 2014— about twenty times more money was spent per candidate in 2014 than was spent in 1976.³³ In fact, this burgeoning expense, especially due to the increasing use of television advertising,³⁴ motivated Congress to legislate the Federal Election Campaign Act (FECA) in 1971, which, in effect, ended up further advancing the trend of the candidate-centered system in congressional campaigns.

The 1971 FECA was almost a re-introduction of the Progressive mind-set, aiming to fix the corrupt campaign financing system in Congress. It established limits to individual contributions and other regulations for federal primary races and general election. Three years later, in 1974, following the revelation of Watergate scandal, Congress added amendments to the initial FECA,³⁵ setting more severe contributions limits on various types of contributors to congressional candidates. The law forced the members of Congress to receive contributions from many different sources in the hope of curbing corruption, or potential causes of corruption, caused by candidates' heavy reliance on a small number of affluent, influential donors, and to make the campaign financing process accountable to the general public.³⁶ Concretely speaking, FECA's contribution limits on party committees and other donors to congressional and senatorial candidates per election are the followings: \$1,000 per candidate per election on individual donors; \$5,000 per candidate per election on political action committees (PACs); and \$5,000 per candidate per election on party organizations. It also limited to \$10,000, adjusted for inflation, the sum that national party organizations could spend on House candidates. For Senate candidates, the limits on party coordinated expenditures depended on the size of a state's voting-age population. Furthermore, the law imposed a \$25,000 aggregate contribution limit on individuals, though

³³ Campaign Finance Institute analysis of Federal Election Commission data

³⁴ Kammers, Finn, and Jacobson, 396-397.

³⁵ Heberlig and Larson, 29.

³⁶ *Ibid.*, 30.

no aggregate limit on interest groups or parties, and mandated public reporting of all contributions and expenditures by candidates.³⁷

The FECA amendments also set limits on campaign expenditures by federal candidates as well as on independent expenditures by groups and individuals. However, the Supreme Court struck down all of the expenditure limits for candidates, while upholding the limits on contributions and certain disclosure requirements in *Buckley v. Valeo* in 1976,³⁸ arguing that limiting campaign expenditure is a violation of speech rights protected by the 1st Amendment, whereas restrictions on individual contribution are not.³⁹

The impact of FECA was that it reduced the importance of parties in congressional elections, further forging the candidate-centered trend in congressional campaigns.⁴⁰ By limiting the sums of direct contributions that national party organizations could make to each congressional candidate, while overall candidates' expenditure is unlimited due to *Buckley v. Valeo*, party money can take up only a small portion of total incumbent campaign receipts under the law.⁴¹ Consequently, contributions from PACs and individual donors became much more important for candidates.

② Soaring Cash Demand, Growing Dependency, and Political Polarization

Aside from its reinforcement of the candidate-centered trend in the American national politics, FECA caused a serious financial problem for candidates: the value of contributions declined due to growing inflation in the U.S. economy. Since FECA failed to index the contribution caps to inflation, a PAC's contribution limit of \$5,000 in 1974 is worth below \$2,500 in the mid-1980s and only \$1066 in 2012 in a real value. If the value of maximum

³⁷ *Ibid.*, 29-30.

³⁸ *Ibid.*, 29-30.

³⁹ *Buckley v. Valeo*, 424 U.S. 1 (1976)

⁴⁰ Heberlig and Larson, 30.

⁴¹ *Ibid.*, 30.

PAC contribution were to be adjusted to Consumer Price Index (CPI), \$5,000 in 1974 would amount to about \$12,000 in the mid-1980s and \$23,460 in 2012.⁴² Individual contribution limits did not accommodate to inflation either. A maximum contribution limit of \$1000 from individuals to candidates had diminished in value to just \$274 in 2002.⁴³ The implication of this inflation analysis is that the greatly reduced value of contribution limits pressured candidates in that they are consistently forced to make greater efforts than previously to raise the amount of money necessary to invigorate their own campaigns. The rising importance of the candidate-centered electoral campaign, soaring campaign costs, impotence of party organizations to assist their members, and continuous inflation of the U.S. economy together caused American politicians many issues.

One of them was the ceaseless existential fear that the majority of American elective politicians confront— they are almost constantly “scared” of and vulnerable to losing their status as politicians.⁴⁴ Anthony King explains the two distinct features unique to the American electoral and party system that invoke this existential fear in the politicians. The first feature is the very short term of the House of Representatives. The election interval of the House of Representatives is constitutionally mandated as a two-year cycle. This is actually the shortest representative term allowed among all other democratic countries. For example, in France, Great Britain, Canada, and Italy, the legal maximum for the duration of the lower house of their national legislature is 5 years. In Japan and Germany, it is 4 years.⁴⁵ Relatively speaking, the term of the U.S. House of Representatives is very short. The second feature is the use of the direct primary on top of general elections. This institutional framework can theoretically better reflect the voice of citizens, given that the election

⁴² La Raja, “Why Super PACs,” 95.

⁴³ *Ibid.*, 95-96.

⁴⁴ King, Anthony. 1997. *Running Scared: Why America's Politicians Campaign Too Much and Govern Too Little*. New York: The Free Press, 29.

⁴⁵ *Ibid.*, 30.

processes are more directly under the control of the citizens than of the party. However, it forces politicians to prepare for two different elections in a row— candidates have to put in an extra effort to win both.⁴⁶

Those two features, together with the limited assistance from party organizations and the soaring costs of political campaigns, strongly and constantly necessitate American politicians to raise money for future elections. Consequently, American politicians spend relatively little time on governing but more on running campaigns for their re-elections. For instance, Ronald Reagan’s White House, especially in the first few years, was organized at least as much for campaigning as for actually governing; Bill Clinton in 1993 brought a group of campaign advisors to the White House, and less than four weeks after his inauguration, an economic adviser was reported to complain, “The campaign” people act as if 1996 is tomorrow.”⁴⁷ In 2010, the former Speaker of House of Representatives, Nancy Pelosi answered in an interview with the *National Journal* that “Day and night, I am relentlessly raising money, starting early in the morning and ending late at night and on weekends.”⁴⁸ The implication of this trend is that raising enough funds to wage a successful campaign transcended to the primary task of a politician— the birth of the “campaign in and of itself.”⁴⁹

As the demand for campaign cash rose and their existential fear scales up, party members get increasingly dependent on wealthy donors and interest groups. Accordingly, their policy agenda started to embody these donors’ interests. For example, beginning almost immediately after the 1994 Republican sweep, the economic policies of the Democrats

⁴⁶ Ibid., 34-35.

⁴⁷ Ibid., 33.

⁴⁸ Heberlig and Larson, 246.

⁴⁹ Ibid. 30.

became much more pro-business.⁵⁰ President Clinton led the campaign, with his vigorous focus on Wall Street, to convince corporations that the Democrats could show them as much support as the Republicans traditionally have.⁵¹ Besides the influence of these corporate interest groups, the importance of individual donors in recent decades has become larger than all other sources combined, such as political parties and PACs. Individual contributions to campaigns grew from 25% of an average campaign's money in 1990 to 61% in 2014, the largest source of direct money to campaigns today for Congress, while PACs' contributions moved from about 50% to less than 25%.⁵²

Because of the growing dependence on individual donors and interest groups, the political scene is getting steadily polarized. According to a study by the Pew Research Center, the active donors of candidates tend to be the politically polarized individuals.⁵³ And individual donors, who thus often have extreme ideologies, focus on the ideologically extreme candidates.⁵⁴ This means that for politicians, a shift to the extremes makes fund-raising more successful. As a result, many conservatives on the Right became unprecedentedly right-wing, while liberals on the Left shifted to more left. Although it seems true that the Right moved more than the Left did, both sides still moved.⁵⁵

The influence of those business interests and individual donors reaches out even to out-of-the-state candidates and election. Although a significant portion of incumbents' individual contributions, at least in the late 1970s and in the 1980s, used to be raised from in-state or in-district donors,⁵⁶ congressional campaign money is increasingly coming from outside of local networks for each candidate. Some members, particularly prominent

⁵⁰ Lessig, *Republic, Lost*, 96.

⁵¹ *Ibid.*, 73.

⁵² Pildes, 826.

⁵³ Pew Research Center. 2014. "Political Polarization in the American Public: How Increasing Ideological Uniformity and Partisan Antipathy Affects Politics, Compromise, and Everyday Life."

⁵⁴ Pildes, "Romanticizing Democracy," p. 825.

⁵⁵ Lessig, *Republic, Lost*, p. 97.

⁵⁶ Grenzke, Janet. 1988. "Comparing Contributions to U.S. House Members from outside Their Districts." *Legislative Studies Quarterly*, 13(1), 83.

spokespersons for party factions, successfully developed networks of ideological donors through direct mail lists and the Internet. Wealthy donors also recognize that they often must make contributions to non-local candidates or to the parties to make a difference, given that many districts became safe nowadays. And this trend has been amplified over the past 25 years. In 1996, a typical House incumbent received individual contributions from 55 different congressional districts on average; however, the figure increased to 70 in 2004.⁵⁷ Also, the majority of contributions come from wealthy cities. For example, both Republicans and Democrats receive large shares of their contributions from urban areas on the three coasts, particularly the Philadelphia-New York-Boston area, Southern California, and the major Great Lakes cities— Chicago and Detroit.⁵⁸ Only less than 20% of all the congressional districts raised a majority of funds locally in 2004.⁵⁹ In the 2012 elections, out-of-state contribution represented about 60% of the total donations for the Senate races.⁶⁰

According to Lawrence Lessig, all this money inflow has produced pro-business legislations in Congress throughout the past few decades. For example, when Congress dealt with a cap-and-trade bill to address carbon emissions problems in 2009, pro-reformers fell short in their spending for the legislation against that of anti-reformers. The lobbying and campaign contributions for pro-reformers made only \$22.4 million, while anti-reformers spent \$210.6 million.⁶¹ With the contributions from the teachers' union—one of the largest contributors to the Democratic Parties— politicians in Congress have continued protecting, instead of reforming, a system of tenure that has been debilitating the effectiveness of public

⁵⁷ Gimpel, James G., Frances E. Lee and Shanna Pearson-Merkowitz. 2008. "The Checks Is in the Mail: Indirect Funding Flows in Congressional Elections." *American Journal of Political Science*, 52(2), 378.

⁵⁸ Gimpel, James, Frances Lee, and Joshua Kaminski. 2006. "The Political Geography of Campaign Contributions in American Politics." *Journal of Politics* 68(3), 634.

⁵⁹ Gimpel, Lee, and Pearson-Merkowitz. "The Checks Is in the Mail," 378.

⁶⁰ Pildes, "Romanticizing Democracy," 827.

⁶¹ Lessig, *Republic, Lost*, 59.

education.⁶² In return of the more than \$1 billion campaign contribution given by individuals and groups affiliated with banks and other finance firms, Congress deregulated banking and finance industry— and this eventually allowed the 2008 financial crisis to happen.⁶³ The correlation between the amount of money that donors give and the following many legislative results that favor larger donors’ interests indicates that there seems an influence of money that has grown huge in Congress.

Overall, the widened network of the powerful money inflow to Congress and the strengthened trend of candidate-centered congressional campaigns suggest that the members of Congress have significantly developed its dependency on donors, and the donors’ influence—or the “appearance” of influence—has intruded on legislative process and outcomes in Congress.

Part 2— Collecting the Influence: The Institutional Evolution of the Parties as an Organized Network and the Revival of the “Machine Politics”

Although the previous section explained how the donors and interest groups’ money seems to intrude upon Congress, Congress still consists of a diverse group of people who have different ideologies and purposes. With Congress’ diversity and conflicting interests, how can the individually funded members of Congress figure out the way to aggregate votes, and what is the party organizations’ role in campaign, given that they are still a necessary part of the party? All these questions suggest that the influence of money inflow coming from the outside of Congress does not explain how members of Congress interact and influence each other to actually carry out legislation. Such analysis also neglects the role that the party organizations play in organizing and influencing their members for campaigns, a role that has grown over the past few decades. Given those points, this section will focus on the “internal”

⁶² Ibid., 66.

⁶³ Ibid., 85.

institutional evolution of the parties in Congress and the party organizations. More concretely, this section sketches out the increasing involvement of the party organizations, chiefly of Congressional Campaign Committees (CCCs), in campaign activities, the development of unique network and informal binding rules among the party members in Congress, and their implications.

① *The Organizational Evolution of the National Parties Since FECA*

Although the initial impact of FECA in 1974 was to debilitate the financial capability of national party organizations, it also motivated the party organizations to try and invent new ways to improve fundraising capability. The first step was to target wealthy individual donors for large contributions, since FECA actually set higher limits on contributions to parties than on contributions to candidates. According to FECA, the contribution cap to the national party committees was \$20,000 for individual donors and \$15,000 for PACs.⁶⁴ In the late 1970s, Bill Brock, the then-newly inaugurated Republican National Committee (RNC) chairman, recognized that the Republicans were a minority party in Congress and thus could not raise funds from interest groups that seek access to legislation process. In response, Brook's RNC started to operate a direct mailing strategy to seek funds across the country from small contributors on conservative issues. The RNC's donor list expanded from 250,000 names in 1975 to 1.2 million in 1980. Although their contributions initially fell from \$12.7 million in 1976 to \$7.3 million in 1977, they grew to more than \$26 million in 1980.⁶⁵ The Democrats followed the Brook's footsteps—their national committees also became more aggressive fundraisers after the party lost control of the presidency and the Senate in 1980.⁶⁶ Both

⁶⁴ Heberlig and Larson, 37.

⁶⁵ Klinker, Phillip. 1994. *The Losing Parties: Out-Party National Committees, 1956-1993*. New Haven: Yale University Press, 139.

⁶⁶ Heberlig and Larson, 37.

parties wrote to those donors with emotionally appealing, highly personalized direct mail,⁶⁷ which typically portrayed the opposition parties as frightening enemies in order to garner donations.⁶⁸ With their expanded donor list and clever mailing strategies, the Republican Party raised over \$200 million via direct email in all 1984 races.⁶⁹

The parties' strategy of direct mailing for fundraising brought a notable difference in donor profiles between the parties' lists and those owned by candidates. Party donors were more likely than candidate donors to be strong party identifiers, highly politically interested, and wealthy—thus, they primarily focused on promoting their ideological policy agenda.⁷⁰ Consequently, the party organizations relied on a narrower network of individual donors than did candidates.⁷¹

The national party organizations' role in electoral campaigns also expanded in the 1970s and 1980s. As their fundraising ability grew tremendously, they increased and diversified their services offered to their members, such as financing polls, ad buys, voter research, opposition research, candidate training, and recruitment. They also provided connections with campaign consultants and PACs.⁷² Although candidates were encouraged to run their own campaigns professionally, the national campaign committees started to assist them by providing specialized services that would be too expensive and inefficient to be purchased by individual campaigns.⁷³ Correspondingly, the number of the national party committee staffs quadrupled in Democratic Party from 1972 to 1984; for RNC, the number became twentieth times larger in the same period.⁷⁴ Another reason of their rising influence

⁶⁷ Godwin, Kenneth. 1998. *One Billion Dollars of Influence: The Direct Marketing of Politics*, New Jersey: Chatham House Publishers. Inc., 12-13.

⁶⁸ *Ibid.*, p. 21-23.

⁶⁹ Godwin, 3.

⁷⁰ Heberlig and Larson, 38.

⁷¹ *Ibid.*, 38.

⁷² Herrnson, Paul. 1988. *Party Campaigning in the 1980s*. Cambridge: Harvard University Press, 35-36.

⁷³ Heberlig and Larson, 40.

⁷⁴ Herrnson, 39.

since the 1970s is the evolution of campaign technologies and strategies— the increasing reliance on capital-intensive technologies such as television and radio, instead of labor-intensive mobilization efforts, gradually weakened the role of local parties. Now, mass communication technology dominates the way in which congressional campaigns are carried out.⁷⁵ As the role of national party committees in campaigns expanded, their influence over the members of Congress started to grow.

A key to the national party organizations' growth in power was their increasing use of "agency agreements" with state parties during the 1980s, primarily with the use of soft money— direct donations to the political parties that were not subject to the FECA caps. While FECA only regulates federal elections, federal and state elections are typically conducted simultaneously, with both federal and state offices appearing on the same ballot. But only spending specifically on federal candidates is subjected to FECA. Although states have their own campaign regulations, they are generally less restrictive than FECA. With agency agreements, on the one hand, the national parties could use soft money to cover the "non-federal share of joint federal-state campaign expenses" for state parties, including administrative costs, issues research and polling, computer and media facilities, voter registration, get-out-the-vote operations, and fundraising. On the other hand, a state party organization would spend hard money (money that could legally be spent on helping federal candidates) in specific congressional races, especially on competitive non-incumbents, often for the compensation of soft money spent by the national party organizations.⁷⁶ Accordingly, "agency agreement" effectively increased the role assigned to the national parties.

Those parties' organizational assistances for their member's campaigns primarily stood on the parties' own financial and electioneering capabilities. That is, it was the national

⁷⁵ La Raja, "Why Super PACs," 96-97.

⁷⁶ Briffault, Richard. 2002. *Soft Money, Issue Advocacy, and the U.S. Campaign Finance Law*, Election Canada.

parties' own effort that brought their organizational evolution. Along with the increasing role of national party organizations in assisting candidates' campaigns since FECA, the party organizations started gaining more power over their members.

② Parties as an Extended Network for Financial Cooperation— the Beginning of Intraparty Financing

Aside from those parties' campaign engineering efforts, there were several significant changes during the 1990s in the electoral and political environment. First of all, the autonomy of the legislative party (the general members of Congress) from the executive party (the party members in President's administration) increased.⁷⁷ Although the autonomy of the legislative party were already high in the post war years due to their leverage over public policy,⁷⁸ incumbency advantage became even more evident during the 1990s, especially in fundraising. For example, the ratio of House incumbents and challenging candidates in fundraising from PACs had been 1.5 to 1 in 1978; however, this became 3.7 to 1 in 1990.⁷⁹ Accordingly, the incumbents actively recognized their financial advantage against challenging candidates.⁸⁰

However the augmented autonomy of the legislative party posed a problem to parties because it was going to make organized collective electoral strategies difficult. The parties' Congressional Campaign Committees (CCCs) correspondingly made unusual efforts encouraging House members to collaborate and reorient themselves to the parties in the 1990s. By explaining that legislative majority status would serve the general party members' rather than the executive's interests, CCCs convinced their members in Congress to assist CCCs to win the majority status in House.⁸¹ Recognizing the financial advantage that

⁷⁷ Kolodny, 276-278.

⁷⁸ Abramowitz, Alan. 1991. "Incumbency, Campaign Spending, and the Decline of Competition in U.S. House Elections." *The Journal of Politics*, 53(1), 53.

⁷⁹ La Raja, "Why Super PACs," 95.

⁸⁰ Kolodny, 276.

⁸¹ *Ibid.*, 276-278.

incumbents possess, CCCs urged incumbents to become a fundraising agency for parties.⁸²

This party-orchestrated effort became evident in the Republicans for the 1994 elections and in the Democrats for the 1996 contests.⁸³

The competition for House seats became significantly more intense during the 1990s. The re-election rate of incumbents with 60% or more margins against the other party dropped from 89% in 1988 to 66% in 1992. There were a large number of potentially vulnerable, newly elected House members in the Democratic Party defending their seats: they were in their first-term in House and thus were easier to be challenged by Republicans. Bill Clinton's unpopularity as the Democratic President in 1994 also gave all Republicans a common national figure to run against— the Democratic Party lost all the House seats but one in the mid-term election. Moreover, the reapportionment was implemented after the 1990 consensus, which significantly altered the dynamics of competition in many House districts. It created House districts with great concentration of African American voters in the hope of increasing the number of African American candidates elected to Congress. In return, their neighboring districts became more white and Republican, creating a number of safe districts for Republican Party. At the same time, southern and southwestern states, where the Republicans' standings are strong, gained seats in Congress, while Midwest and the Northeast lost their seats. This gerrymandering and reallocation of House seats based on demographic reports created a more favorable ground for Republican House candidates to win more seats in Congress.⁸⁴

In response to the increased competition, the national party organizations became desperate in outspending the campaigns of the opponent party. In fact, the percentage of party expenditures in total candidate expenditures on congressional campaign increased

⁸² Heberlig and Larson, 36.

⁸³ Kolodny, 276.

⁸⁴ Kolodny and Dwyre, 277-278.

dramatically in the 1990s.⁸⁵ The competition dynamics had also changed by the end of the 1990s. Control of the House now relied on a few seats, because most incumbents had safe seats. For example, a report listed only 46 House districts, on average, as competitive in the 1998-2004.⁸⁶ This meant that the competition over those seats became exceptionally cutthroat. To win the competition, the parties required more collaborative efforts from their members.

Although ordinary members of the parties often resisted the reorientation activities led by the party leaders prior to 1994, in the wake of these changes in political conditions, incumbent party members started to recognize that the benefits of winning a majority would better serve their own interests. Their altruistic financial assistance to other party members turned out to be actually beneficial for their own legislative agenda.⁸⁷ As a result, by the end of the 1990s, incumbents redistributed substantial amount of campaign funds for the benefits of other members and party's "collective interests."⁸⁸

Overall, the dynamics that emerged since the 1990s reveal that party members spent more time raising money for partisan goals than ever before.⁸⁹ Parties became an extended form of networks in which the members and different departments share and exchange money and services with each other. The three changes in the electoral and political environment during the 1990s motivated and enabled both parties' CCCs to institutionalize the mutual assistance between their members, pressuring their members to follow the CCCs' guidance. Consequently, the members of Congress started to function as a fundraising agency for parties— in other words, the candidate-centered system of the American national political scene has started showing a collective, party-oriented behavioral manner.

⁸⁵ Parker, David. 2008. *The Power of Money in Congressional Campaigns 1880-2006*. Norman: University of Oklahoma Press, 22-23.

⁸⁶ Heberlig and Larson, 49.

⁸⁷ Kolodny and Dwyre, 279.

⁸⁸ Heberlig and Larson, 49.

⁸⁹ Bedlington, Anne and Michael Malbin. 2003. "The Party as an Extended Network: Members Giving to Each Other and to their Parties," In *Life After Reform: When the Bipartisan Campaign Reform Act Meets Politics*, ed. Malbin, Lanham. Maryland: Rowman and Littlefield, 122-125.

③ The Growth and Evolution of Intraparty Financing

House incumbents can contribute to other candidates or to congressional campaign committees either through their principal campaign committees (PCCs)— committees they organize to finance their own reelections— or through a leadership political action committees (LPACs)— committees sponsored by incumbents to finance political activities outside of their own reelection campaigns. Both types of committees are themselves financed by contributions from PACs and individual donors. Therefore, contributing money from their PCCs or LPACs to parties and candidates means that they are “redistributing” funds they raised from donors.⁹⁰

For the national parties, raising hard money from incumbents was practical for three reasons. First, parties can save the highly costly fundraising methods, such as direct mail and other extravagant fundraising events. As former DCCC chairman of 2003 and 2004, Robert Matsui reflected that money from members was particularly important because there was no cost of fundraising; it did not require stamps and printings.⁹¹ The parties can also benefit incumbent donor networks, reducing competition with incumbents for funds. For the parties, this brings greater efficiency in fundraising.⁹² Therefore, party organizations encouraged members to raise as much campaign funds as possible and to transfer some of it to the parties or directly to needy candidates.

The Bipartisan Campaign Reform Act (BCRA) in 2002— also called the McCain-Feingold campaign finance reforms—motivated the parties to pressure incumbents for even more campaign contribution. BCRA prohibited the national parties from raising soft money, because in the reformers’ eyes, soft money was corrupting. Due primarily to the parties’

⁹⁰ Heberlig and Larson, 4.

⁹¹ *Ibid.*, 47.

⁹² *Ibid.*, 48.

heavy use of soft money for electioneering advertisements,⁹³ soft money comprised about as much as one-third of the national parties' receipts in the 1990s; in the 1999-2000 election cycle, the ratio of soft money had grown up to be 40% of total national party income.⁹⁴ Of all the soft money collected between 1991 and 2002 before BCRA was implemented, about a half of soft money came from individual donors, and the rest from corporations and unions.⁹⁵ The replacement of such an enormous amount of money was a challenging task for CCCs of the both parties. Thus, they further strengthened their pressure on incumbents for money.⁹⁶

Their success in raising incumbent money derived from the regulatory blank space left by BCRA: the money flowing from PCCs to the national party committees. As federal campaign finance law regulates campaign donors, it also regulates the members of Congress. While the same limits governing all PACs that engage in federal electioneering apply to LPACs (incumbents may contribute \$5,000 per candidate per election and \$15,000 per year to national political parties from their LPACs), members can only give \$2,000 per candidate per election from their PCCs. However, federal law permits a federal candidate's PCCs to transfer unlimited sums of unobligated hard money to any national party committee. In the recent election cycles, House and Senate incumbents have taken advantage of this regulation and redistributing an increasing amount of money.⁹⁷ In addition, party leaders also urged incumbents to launch LPACs and operate them in a similar way to PACs: incumbents can raise \$5,000 per donor per election for LPACS and transfer money to other candidates or committees through them.⁹⁸ In 1990, only 21 House members (5% of the total membership) had LPACs, but in 2006, 206 members (47%) sponsored a LPAC. Accordingly, the

⁹³ Briffault.

⁹⁴ Ibid.

⁹⁵ *Soft Money Background*, opensecrets.org.

⁹⁶ Heberlig and Larson, 53.

⁹⁷ Ibid., 5.

⁹⁸ La Raja, "Why Super PACs," 99-100.

contribution from incumbents' LPACs to candidates grew from just over 40% in the 1990 election cycle to 75% in the 2004.⁹⁹

As a result of all this money-transfer engineering, incumbent transfer became an increasingly important source of money for both CCCs and candidates. For CCCs, the House Democratic incumbents comprised 22% of total receipt of the DCCC, and House Democratic incumbents contributed 19% of total donation of the NRCC in 2008.¹⁰⁰ For candidates, incumbent contribution comprised less than 5% of the total contribution to candidates prior to 1996. However, by 2006 the amount of incumbent contribution outgrew the contributions respectively from affluent industries— such as banks, entertainment, lobbyists, gun industries—and became the biggest source of direct contribution to House candidates.¹⁰¹ The percentage of rank-and-file members willing to share their campaign funds also increased sharply from a little above 50% in 1992 to 90% in 2006.¹⁰² All those recent trends suggest that intraparty campaign financing is now deeply integrated into the current paradigm of campaign financing.

④ Purchasing the Leadership

Although the original function of redistribution of campaign funds was to aid fellow party members in competitive races for the parties' majority status in the legislature, it has acquired a much bigger implication today. Indeed, incumbents redistribute their excess money in order to gain support from fellow members for their promotion within the parties. In other words, incumbents began “purchasing” the cooperation of other members and candidates for the enlargement of their intra-party influence. As a result of the cooperation buy-out, members of

⁹⁹ Heberlig and Larson, 99.

¹⁰⁰ Ibid., 8.

¹⁰¹ Ibid., 6.

¹⁰² Ibid., 104.

Congress are increasingly acting as a team, not only to elect fellow party members but also to pass legislation.

The ever-increasing demand for campaign money and escalating level of electoral competition called for accomplished leaders with an extraordinary fund-raising capability and extensive influence over other members of the parties. By correlating member-to-member and member-to-party redistributions with advancement in the leadership within the parties, the amount of campaign fund redistribution has become a crucial benchmark by which all leader candidates are judged. According to Herberlig and Larson, in the 105th to 110th Congress (from January 1997 to January 2009), the classified categories of party members— party leaders, members in the “extended leadership,” committee leaders, “prestige committee” members, and rank-and-file members— are all respectively expected to make contributions according to the power of their position. The relationship shows that the higher the members’ positions are in a party, the more they have to give money to the party and fellow candidates.¹⁰³

In other words, the redistribution of hard money almost transcended to a party rule that the members are expected to follow— the creation of new party “dues.” For example, in 2004 the then-Speaker of the House, Nancy Pelosi, warned Representative Collin Peterson, the most senior Democrat on the Agriculture Committee, that if he did not pay the party “dues”— and pledge to donate more to the DCCC in the future— he would be asked to resign his position for other enthusiastic party-minded fundraisers. At this time, Peterson had only paid \$25,000 out of the party’s expectation, \$70,000.

¹⁰³ Ibid., 162.

Recognizing that his promotion was in danger, Peterson paid the balance of his dues for 2004.¹⁰⁴

The relationship between redistribution and in-party promotion can be illustrated with a case of Representative Nancy Pelosi (D-CA). Representing the city of San Francisco, CA— one of the most liberal cities in the U.S. with abundant wealth— Pelosi has been extremely successful in raising campaign funds from her constituents, while also making enormous redistribution of her money to the Democratic Party organizations and her fellow candidates. In doing so, she built and forged new relationships with the recipients at the same time.¹⁰⁵

With all those efforts, Pelosi rose to Speakership in House. For example, in the hot-blooded leadership race against Maryland congressman, Steny Hoyer, for the position of whip in Congress in 1999, it was Pelosi's extraordinary effort to redistribute her campaign funds to the party and fellow members that determined her victory. Both Hoyer and Pelosi were very shrewd strategists: they both had an extensive network within the party; they were also deeply political actors when it comes to building relationships with other members.¹⁰⁶ Among all the similar efforts that both Pelosi and Hoyer made for this race, the crucial difference was that Pelosi's financial contribution to the Democrats outweighed that of Hoyer. Indeed, during the 1999-2000 campaign cycle, Pelosi became the biggest Democratic member donor and overall the third biggest contributor to Democratic Party, transferring more than \$1.1 million dollars. In contrast, her rivalry Hoyer's contribution to the party was \$927,000.¹⁰⁷ As a result, she won the competition: Pelosi was finally elected as House

¹⁰⁴ Billings, Erin. 2004. "Peterson, in Ag Bid, Pays Up." *Roll Call*.

¹⁰⁵ Peters, Ronald and Cindy Simon Rosenthal. 2010. *Speaker Nancy Pelosi and the New American Politics*. New York: Oxford UP, 42-43.

¹⁰⁶ *Ibid.*, 44-45.

¹⁰⁷ *Ibid.*, 49.

Minority Whip in 2001.¹⁰⁸ After the win, she continued to raise millions for Democratic Party and its members in the following year, redistributing \$7-8 millions for the 2002 election in 30 states and 90 congressional districts, many of which were more conservative than her own.¹⁰⁹ Despite her effort, Democrats fell short in the election. However, the party recognized and valued her diligent efforts in fundraising and commitment to the party— as a result, she was elected as Speaker of the House of Representatives in 2002, the first woman to hold this position.

In-party promotion and the amount of redistribution did not only correlate for Pelosi's case. Members nowadays generally value follow leaders who can raise funds for the party and its candidates, because campaign money is tremendously important. It is so important that rank-and-file members would rather select ideologue extremists than moderates for their leaders, so long as the former compiles stronger party fundraising records than the latter and are motivated to redistribute their money. Members are even willing to accept the risk of the potential for extremist policy outcomes, in exchange for the collective benefit of electoral resources and the individual career benefits that would result from majority status.¹¹⁰ With the leaders' cooperation purchasing, the majority party can dictate which bills make it to the floor for a final-passage vote.¹¹¹

For example, the majority-party centrists nowadays support ideologically extreme bills proposed by ideologues or accept “negative agenda control,” in which the majority-party leaders struck down the bill proposals of the majority-party centrists from even going to the floor.¹¹² They do so because they receive “compensatory side payment” for their submission— centrists accept negative agenda control in exchange for larger campaign

¹⁰⁸ Ibid., 50.

¹⁰⁹ Ibid., 51.

¹¹⁰ Heberlig, Eric, Marc Hetherington, and Bruce Larson. 2006. “The Price of Leadership: Campaign Money and the Polarization of Congressional Parties” *The Journal of Politics*, 68(4), 911.

¹¹¹ Jenkins, Jeffery, and Nathan Monroem. 2012. “Buying Negative Agenda Control in the U.S. House.” *American Journal of Political Science*, 56(4), 897.

¹¹² Ibid., 897-898.

contribution from the party leaders.¹¹³ The rise of floor leaders over the last decade, such as Dick Armey (Republican, a former House Majority Leader from 1995 to 2003), Tom DeLay (Republican, a former House Majority Leader from 2003 to 2005), and Nancy Pelosi, all ideologues and aggressive fundraisers—support the fact that even ideologue extremists can buy the leadership, as long as they have money.¹¹⁴

All these institutional and organizational changes indicate that the party in Congress and the party organizations together has developed and institutionalized incumbent's intraparty financing for party's majority status in the legislature since the 1976 FECA. During the 1990s, the institutionalization of incumbent transfer was accelerated and solidified, and BCRA further advanced this trend. As a result, it turned into a binding rule in Congress. In return, an incumbent who gives more money to other fellow members and the party organizations gets more influence in the legislative outcomes, regardless of the incumbent's ideological extremity. In other words, the parties in Congress are getting close to a top-down organization—the rise of “machine politics.”

Accordingly, those who are in leadership positions are willing to do a favor of their donors to strengthen and solidify their relationship with their donors. Corporate interests too seem to seek for an intimate relationship with the party leaders to increase the efficacy of their money. For example, John Boehner, current Speaker of the House of Representatives, started building such tie with big businesses in the 1990s. What he did was to hold a weekly meeting with “the Thursday Group,” a group consisting of lobbyists from Citigroup, MillerCoors, UPS, Goldman Sachs, Google and R.J. Reynolds, playing golf.¹¹⁵ In fact, his PAC spent \$83,000 on golf event in 2009. Corporations provided him plane rides 45 times

¹¹³ *Ibid.*, 911.

¹¹⁴ Heberlig, Hetherington, and Larson, 995.

¹¹⁵ Matt Tabibi. 2011. “The Crying Shame of John Boehner,” *Rolling Stone*.

between 2000 and 2007, and offered him at least 41 corporate-sponsored trips in the past decade.¹¹⁶

Besides the party members' dependency on the donors and interest groups that has been exacerbated since FECA, the members of Congress are now dependent on each other, especially on the ones who raise and redistribute an extraordinary amount of campaign money. This member-to-member dependency facilitated the "collaboration" between members— or rather the "domination" of the interests of wealthy members in the national parties. And this recent development of intraparty control is precisely why the party leaders and members who seek the power over other members are increasingly willing to show their favor to the big contributors. The big corporations also seem to be exploiting this new leadership power paradigm in the pursuit of their interests. As a result, the legislative outcomes have been favoring their interests. In other words, by fueling the party leaders, they are seizing the power of party leaders to mobilize the votes of other rank-and-file members in Congress.

Part 3— The New Players: The Super PACs

In January 2010, the Supreme Court ruled in *Citizens United v. FEC* that the "free speech" rights of corporations and labor unions could not be limited by congressional restrictions on the amount of money they can spend in elections to advocate for or against candidates, so long as they do so independently of candidates and political parties. Because such spending had been banned since the Tillman Act of 1907 (and the Court upheld the prohibition in *Austin v. Michigan Chamber of Commerce* (1990) and *McConnell v. Federal Election Commission* (2003)), the *Citizens United* case allowed direct electoral spending by corporations and created a new path for a substantially greater flow of money into elections.¹¹⁷ Shortly after *Citizens United*, in March 2010, the D.C. Circuit Court of Appeals

¹¹⁶ Ibid.

¹¹⁷ Heberlig and Larson, 57.

ruled in *SpeechNow.org v. Federal Election Commission* that any political committee could raise an unlimited amount of money from individuals for the purpose of influencing elections, so long as they operate independently of candidates and party committees. Coupled with *Citizens United*, this ruling enabled any organization, including corporations and unions, to make unlimited donations to such “independent” political groups.¹¹⁸

These rulings have facilitated the emergence in 2011 of so-called “Super PACs”—political committees raising unregulated funds from corporations, unions, and wealthy individuals to pay for independent express advocacy. However, in fact, Super PACs are not the best strategy for candidates, given that they do not always respond as quickly as other committees do or adapt to changing dynamics of a campaign. They also bear higher advertising costs than candidates, who, by law, must be offered the lowest available rates from broadcasters.¹¹⁹ Nevertheless, without the fundraising restrictions, Super PACs can raise and spend money easier than conventional PACs do. Also, contrary to party committees, they have no concern in using soft money. Especially in the wake of the BCRA regulations, Super PACs is a more convenient tool to finance elections.¹²⁰ As a result, for instance, in the 2012 presidential election, every serious presidential candidate had his or her own Super PACs.¹²¹

Given these merits, the congressional parties have set up Super PACs, which are legally independent operations from the party committees but managed by former party staff and working closely with allied interest groups. This way, Super PACs can take advantage of all of the resources and tools associated with the formal party structure while benefitting from the unlimited fundraising capacity.¹²² For example, in the 2012 presidential election, some companies working for both Mitt Romney’s campaign and his Super PAC were sharing the

¹¹⁸ La Raja, “Why Super PACs,” 101.

¹¹⁹ *Ibid.*, 101.

¹²⁰ *Ibid.*, 101.

¹²¹ *Ibid.*, 37.

¹²² Fishkin, Joseph and Heather Gerken. 2014. “The Two Trends That Matter For Party Politics.” *NYU Law Review Online*, 89(32), 37.

same office in Alexandria, VA, with the founder of one of the companies married to a deputy campaign manager for the campaign.¹²³ Following the stagnating ability of party committees after BCRA, Super PACs have gradually entrenched the role of party organizations, increasing their activities and spending.¹²⁴

The notable difference between Super PACs and formal party organizations is that Super PACs can ignore the will of the electorate, while purely manifesting the interests of their donors, as Super PACs are legally “independent” advocates of formal party organizations. Being free from the FECA or BCRA limits, in fact, many Super PACs raise money from just a few donors. For instance, in 2012, the top 100 individual donors to Super PACs, along with their spouses, comprised only 1% of the entire donor profile, but took up 67% of the money they contributed.¹²⁵ As a consequence, Super PACs tend to be much closer to top-down style organizations that directly and purely reflect the private interests of their donors much more than other party institutions do.

The problem of the increasing use of Super PACs is that it is likely to undermine the influence of the “party faithful”— the group that stands between the electorate and the party.¹²⁶ The party faithful bridges the gap between the parties and the electorate: they are everyday voters who have chosen to devote themselves to the parties and, as a result, are a part of both arenas. Since they regularly interact with the campaign leaders, staffs, or candidates, they have a certain influence in the parties. They can check the party elites on behalf of the electorate; they can even help solve difficult political questions; they can speak for voters because they are everyday voters.¹²⁷ In the wake of the increasing use of Super

¹²³ McIntire, Mike and Michael Luo. 2012. “Fine Line Between ‘Super PACs’ and Campaigns.” *New York Times*.

¹²⁴ La Raja, “Why Super PACs,” 101.

¹²⁵ “2014 Top Donors to Outside Spending Groups,” opensecrets.org.

¹²⁶ Fishkin and Gerken, 45.

¹²⁷ *Ibid.*, 45.

PACs, which powerfully express their own interests with the unregulated money, the party faithful is likely to lose their relative influence in the parties.¹²⁸

Since Super PACs are much more likely to be wealthy individual donor- or interest groups-oriented entities than other party institutions are, the rise of Super PACs means that some affluent private interests can now legally and much more freely influence the electoral results in the pursuit of their interests. The consequence is this: Congressional politics further distances itself from the general electorate's voice.

Part 4— Dependency Corruption and Constitutional Problems

All those dynamics in the recent American campaign financing system that are explained in the previous three sections have the same core issues. Because of the enormous money inflow to campaigns and parties, the system does *not* elect the representatives of “the people,” and thus, the legislative outcomes do not favor “the people.” This legislative process makes the government illegitimate, and accordingly, the people lose their faith in the American democracy.¹²⁹

The lack of trust of the majority American citizens in Congress induces a low voting rate— people believe that their votes are ineffective, because they would not have as much influence as the money coming from the big interests does in Congress. This discourages one from going to vote.¹³⁰ As the people lose their trust in government, they stop exercising their democratic rights in voting.¹³¹ The less people vote, the less legitimate the legislative outcomes become, since one of the two core sources of democratic legitimacy derives from “the inclusion of all citizens in political decision-making processes”— political participation

¹²⁸ *Ibid.*, 46.

¹²⁹ Lessig, “Democracy After Citizens United.”

¹³⁰ Lessig, *Republic, Lost*, 169.

¹³¹ *Ibid.*, 168.

by voting.¹³² Therefore, the system that makes the majority of the American population think that the government is not trustworthy, or that a few big interests corrupt Congress, results in legitimacy crisis of the American democracy.

Despite such a problem, the Court struck down congressional restrictions on the amount of money corporations and labor unions can spend and raise, denying the so-called “equalization rationale” in campaign financing. In *Citizens United*, the Court argues that laws that restrict the political speech right protected by the First Amendment have to pass a “strict scrutiny,” which requires the government to prove that the legislation can promote a proper interest of the government and bring out the intended result to achieve such interest. The state can regulate the free-speech right, as the Court asserts, only if such regulation prevents quid pro quo corruption between the politicians and financial contributors. Even though bribery is a form of speech, it is legitimate for the state to regulate quid pro quo relationship, because such relationship distorts the proper democratic process essential to the American democracy. That is, the government would fail to work on public interests, and would rather carry out venal interests.¹³³ However, according to the Court, the government failed to prove that the campaign finance regulation could prevent quid pro quo corruption or the appearance of such corruption— the government’s speculation that corporations and unions have influence over or an access to the elected members of Congress does *not* indicate that “those officials are corrupt.”¹³⁴

In addition, the Court asserts that “the appearance of influence” or access will “not cause the electorate to lose their faith in the democracy,” while the factual data shows the opposite reality. In fact, the majority of Americans think that Congress is doing favor for the funders’ interests, rather than those of the general electorate’s, and thus, many of them have

¹³² Habermas, Jürgen. 2012. *Crisis of the European Union: A Response*. Cambridge: Polity Press, 14.

¹³³ Lessig, “Democracy After Citizens United.”

¹³⁴ *Citizens United v. Federal Election Commission* 558 U.S. 310 (2010), emphasis added

lost their faith in government. According to a Pew Research Center's survey, only 22% of American voters say they can trust the government in Washington D.C. "almost always" or "most of the time," while the figure was 70% in 1980.¹³⁵ Another study, American National Election Studies project at the University of Michigan, suggests that 64% of survey respondents believed that government was run for the benefit of all and 29% believed that it was run for the benefit of a few big interests in 1964. However, these figures were almost reversed by 2008: only 29% believed government was run for the benefit of all, and 69% of respondents believed that it was run for the benefit of a few big interests.¹³⁶ Nevertheless, based on their false assertions and speculations on the empirical facts, the Court concludes that the government regulation failed to pass "scrutiny," and thus, is illegitimate.

Besides the erroneous factual speculation by the Court, the core problem of this ruling, according to Lessig, is the Court's unreasonably narrow definition of "corruption." The Court only admits quid pro quo relationship between donors and politicians as a constitutionally problematic corruption, disregarding so-called "dependency corruption," without giving any reasons to back up such definition. Dependency corruption happens when an institution develops a dependency that conflicts with its intended dependency; however dependency corruption only appears as the "economies of influence that have developed within a designed system."¹³⁷ In a society that has many affluent donors and interest groups that support pro-donor-interests politicians, politicians who support the interests of such wealthy funders structurally have a better likelihood to gain a large financial support from them than those who are not. Especially since the current paradigm gives a significantly competitive edge to those who can outspend their opponents in campaigns, the pro-donor-interest politicians have much higher chance to be elected than those who do not support the interests

¹³⁵ Lessig, *Republic, Lost*, 167.

¹³⁶ *Ibid.*, 167.

¹³⁷ Lessig, "Democracy After Citizens United."

of the big donors. As a result, Congress would be filled with the pro-big-donor politicians. Accordingly, the legislative decisions mainly manifest the interests of the wealthy donors, instead of those of “the People.” Congressional politicians no longer stand for their constituents as a whole— instead, they represent their funders. The problem of dependency corruption is that it causes the insufficient representation of the non-contributors’ interests and the overrepresentation of the affluent funders’ interests in Congress, depriving the people of their faith in the government as well as making the government illegitimate.

Although dependency corruption is not “corrupt” in a sense of breaking laws, it is still a legitimate interest of the state to regulate dependency corruption. As *quid pro quo* corruption makes Congress depart from its proper focus, from the People *alone*, so does dependency corruption.¹³⁸ Although the mechanisms of the two corruptions are different, they both cause the same problem: legitimacy crisis in American democracy. As *Federalist No. 57* argues that the House of Representatives has to have their dependence on the people *alone*,¹³⁹ not on the donors, it is within the government’s interest to prevent dependency corruption. Solving dependency corruption also helps the people regain their faith in the government. And this would produce higher political participation, and thus, the legislative decisions can become more legitimate. Just as the government is constitutionally justified to regulate *quid pro quo* corruption, it should also be able to regulate the 1st Amendment right of the affluent financial contributors to prevent dependency corruption.¹⁴⁰

To prevent dependency corruption, the state has to develop a better system in which Congress can develop and maintain its dependency on the people alone. The chief method for achieving this is to make the relative ability of all voters to influence electoral outcomes more “equal” among each other than it is currently. Preventing the wealth gap from turning into a

¹³⁸ *Ibid.*

¹³⁹ *Constitution Society*, “The Federalist No. 57.”

¹⁴⁰ Lessig, “Democracy After Citizens United.”

huge disparity of political influence among the electorate. The past campaign finance laws have embodied this “equalization” principle by setting a ceiling on expenditures for political expression by citizens and groups. However, the restriction-based approach in the past did not prove to be effective. In addition, the Court’s ruling in *Citizens United* and many following rulings on campaign financing regulations since then have struck down the restriction-based approach for the “equalization.” Therefore, the government does not seem to be able to develop their proper dependency via campaign finance regulations in the foreseeable future. Now, the system needs other kinds of approaches that are both realistic and effective— one of those kinds may be “empowerment.”

A Suggestion: Empowerment Approach

Historically, campaign finance regulations have been the embodiments of restriction-based approach: Tillian Act of 1907, FECA, and BCRA either ban the contribution or limit the amount of contribution from money-giving actors to the politicians and party organizations. However, in order to democratize the system in the light of *Citizens United* ruling, we can adopt an opposite approach: the people should receive a small and equal amount of money from the government to give it to their favorite politicians. Bruce Ackerman calculates that if the one hundred million Americans who voted in the 2000 election had \$50 each to spend during that campaign period, their combined contribution would have amounted to \$5 billion, outspending the \$3 billion actually provided by private interests during the year.¹⁴¹ The Patriot program, as Ackerman calls, has other effects: it would increase the number of competitive districts from 40 or so currently to 100-120, as a result of public money offsetting private money. Rather than trying to restrict the amount of money in campaign finance, the public financing system democratizes and diffuses finance,

¹⁴¹ Ackerman, 18.

by “empowering” the general individual voters.¹⁴² The administrative expense for carrying out this public finance system (registration cost, public money processing fees, private donation processing fees, and Web-maintenance fees) would be affordable too— Ackerman and Ayres estimate that the total administrative cost of public financing would be around \$220 million or less in 2002, and according to them, this is a bearable cost.¹⁴³ Therefore, the public finance is a feasible option that can change the dynamics of campaign financing in the United States.

What this voucher proposal in campaign financing essentially suggests is that donating money would become a part of the formal voting and of the 1st Amendment right—the creation of “money vote.” Fundraising may become indistinguishable from real elections. However, there is an important distinction between the function of the money vote from that of real election in democracy: the money vote is for public discourse, while real elections are for the final political-decision making procedure. According to Jürgen Habermas, these two are the two components that generate legitimacy of democracy.¹⁴⁴ Given the current political and electoral system, money is an indispensable component to express one’s political thoughts in the society at a large scale. Although theoretically, one can still discuss political issues with one’s peers, family members, or other fellow townies in person, the recent political, electoral, economic environment shows that such a traditional form of political discourse cannot circulate in the public sphere—in fact, mass media is now the dominating force in the public discourse.¹⁴⁵ It is necessary nowadays for citizens to use money in order to effectively participate in the public discourse of politics.

¹⁴² *Ibid.*, 19.

¹⁴³ Ackerman, Bruce and Ian Ayres. 2002. *Voting with Dollars*. New Haven: Yale University Press, 242.

¹⁴⁴ Habermas, 14.

¹⁴⁵ Habermas, Jürgen Sara Lennox, and Frank Lennox. 1978. “The Public Sphere: An Encyclopedia Article,” *New German Critique*, 3, 54-55.

Money vote will empower ordinary citizens to insert their own voice in the public discourse. With the campaign money that the government can provide to all the electorate, party members will start to pay attention to the enormous potential of the new money source too—to the people. Therefore, the party members can increase their proper dependency on the people, and Congress can become more *legitimate* than currently.

The current campaign financing laws, which do not achieve their intended goals, principally only manifest “restrictionism.” And the history suggests that those regulations have been not as functional as they are supposed to be, because they have always left loopholes. Restrictionism also did not diminish the motivation of influential donors or interest groups to give money to party members and organizations—they have always found out or invented new ways to get around regulations to pour their money into Congress. Besides, the recent trend of Supreme Court rulings since *Citizens United* denies the regulation of the 1st Amendment right. Given that the Court rulings would be consistent with the anti-restrictionism in the foreseeable future, the current system should rather adopt a radically different approach—empowerment of the influence of the general electorate.

The public campaign financing system can raise the impact of general public, and thus, can drown out the coalition of affluent interests.¹⁴⁶ In addition, since it is the equal empowerment of the 1st Amendment right of every American citizen, the legislation does not face the Court’s recent disfavor of restrictionism. Therefore, I propose that Congress should introduce the public voucher system for campaign financing. With this law, the electorate can shift Congress back to its proper focus, and the system can embody a more legitimate functioning of the American congressional democracy.

Conclusion

¹⁴⁶ Ackerman, 19.

The history of campaign financing in the United States shows a complex series of electoral, political, technological, and regulatory changes and the corresponding changes in the congressional parties. The congressional campaign since the first Progressive reforms has been transformed into a candidate-centered system, adapting to constitutional and regulatory changes. As the way in which the campaigns are run changed along with the electoral, political, and technological changes, the importance of campaign money surged, and concern for funds dominated the congressional candidates.

Seeking access to the legislature, wealthy donors and interest groups took advantage of the campaign financing system, inserting their own private interests in the money they gave to the party members and organizations. Party organizations and members in Congress also started to organize their influence based on how much money they could redistribute to the party organizations and their fellow members. As a result, national parties evolved into more organized, centrally controlled entities. They now act as a team. Some members are even willing to sacrifice their policy agenda, to receive campaign funds from their leaders. This “cartelization” in a candidate-centered campaign system suggests that certain sources of money have disproportionately large influence in the legislative results compared to other sources. Congress now depends more on those specific sources than the other money— a specific group of donors who makes the party leader rich have more influence in Congress than the other donors. The larger the amount of money that funders can provide, the more likely the party members would favor their interests. Political parties have lost their proper focus on their dependency— dependency on their electoral constituents *alone*, not on its donors. In *Citizens United*, the Supreme Court further facilitated the deviation of Congress from their intended focus.

A possible remedy to this systematic problem in Congress, I propose, is a public voucher system of public campaign financing. This paradigm will “empower” the American

citizens' 1st Amendment right— freedom of speech— and can be introduced to the current system considering the recent Supreme Court cases. Because its essence is “empowerment” of the speech right, not the “restriction” of it, it does not face the Court’s recent disfavor of restrictionism since *Citizens United*. Although it is not clear that how effective this paradigm would turn out in real practice, because the proposal has yet to be enacted or implemented, it would be worth giving a shot. This policy would facilitate public discourse in democracy, make politicians care about the ordinary electorate, and drown out the voice of affluent individuals and interests group, and therefore, has a potential to bring back the *republic* that Benjamin Franklin originally wrought for the United States. What we should try out now is not the further incompetent embodiment of “restrictionism.” But rather, we need a *civil empowerment paradigm* that enables the citizens to speak to their own nation’s politicians. With the voucher system, the Americans may reclaim their own democracy with their own voice.

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