

Campaigns and Elections

“The overflow of big money in politics drowns out the voices of everyday people . . . The more money you have the more speech you have. That leaves everyday people out of the equation.”

—Nina Turner, Democratic State Senator from Ohio
2008–2014, interview March 4, 2017

Essential Question: How do electoral processes and campaign finance laws affect political participation?

Every four years, millions of Americans go to the polls to cast a vote for the American president and lower offices. Sometimes a candidate will win in a “landslide” with a strong margin and claim victory before sunset. Sometimes close elections require careful vote counting, and no victor is declared for days. In November 2016, some 138 million people, slightly over 60 percent of America’s voting-eligible population, cast a vote, and Donald Trump was elected president. **BIG IDEA:** Popular sovereignty is a fundamental principle in representative government, which assumes the engagement and participation of citizens.

There are broad statements regarding voting and elections in the Constitution. Article I states in part that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof,” but Congress may “make or alter such Regulations.” It also states, “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members.”

Congress has set federal elections to occur every two years, in even-numbered years, on the Tuesday after the first Monday in November. Congressional and presidential terms begin the next January. With constitutional amendments and federal law, Congress has some oversight on elections, but administering elections is a state responsibility.

State and Local Administration of Elections

Most states require a voter to register in advance of an election and to be at least 18 years old, a citizen of the United States, a resident of the state where voting will take place, and a non-felon. States can require **voter registration** 30 days in advance of the election so county boards of elections can create and maintain the voter rolls, or poll books.

States' election laws authorize some state department, bureaucratic agency, and/or a secretary of state to oversee elections statewide. Certain customs and procedures are consistent statewide, such as voter registration guidelines, the times voting locations are open, procedures for candidates to file candidacy, and the criteria for candidates to get their names on the ballot. County or local governments conduct and oversee local elections even when the election is for federal offices.

Typically, a county-level elections board governs the election and vote-counting process and serves as a referee when controversies arise. For purposes of voting, counties, cities, and towns are subdivided into **wards**, which are broken into **precincts**. A precinct is a small geographic area of about 500–1,000 voters, who all vote at an assigned **polling place**, often a school or community center. Its size is determined by the supervisor of elections. States can allow 17-year-olds to vote, and many do so in the primary elections if the voter will be 18 by the date of the general election in November. A state elections official oversees the process statewide, while the county-level boards of elections tabulate and report the election returns. Typically, winning candidates are known late on election night or by the following day, but election authorities do not certify the election for days or weeks while they verify the count and wait for absentee ballots to come in.

WHO GOVERNS ELECTIONS?	
State	Federal
Sets times and locations for elections (based on federal, state, and local criteria), most dates	Sets date for federal, general elections
Chooses format of acceptable ballots and how to file for candidacy	Has judicial jurisdiction on election policy
Creates rules and procedures for voter registration	Addresses suffrage in constitutional amendments
Draws congressional district lines	Enforces relevant civil rights legislation
Certifies election results days or weeks after Election Day	Administers and enforces campaign finance rules

Ballot Measures

In several states, citizens can change the law with elections or end an elected official's term early. Through ballot measures developed mostly during the Progressive Era—the initiative petition, referendum, and recall—citizen-voters can exercise great influence in shaping policy. They are examples of the participatory model of democracy at work.

Initiatives With **initiatives**, citizens or an organized group formulate a law in writing, then gather the necessary number of registered voters' signatures on a petition to place the proposal on the ballot for approval by the

electorate at-large. The procedure as a statewide tool has existed since South Dakota established it in 1898. There are direct and indirect initiatives. Direct initiatives go directly from the citizen-effort to the ballot for citizen approval. The indirect initiative must first go to the state legislature. If the lawmaking institution does not pass the proposal, then it goes to the ballot for citizen approval into law. In some states, the procedure allows the legislature to offer competing proposals in an election. The initiative can create state law, such as a statewide smoking ban or legalization of marijuana. Today, 24 states have a statewide initiative procedure.

Referendum A similar procedure known as a **referendum** can repeal an unpopular law. Legislative referenda are required for certain policies in many states. The most common are certain statewide taxes, bond issues, and constitutional amendments. The legislature will draft the policy and propose it to the people for approval. The legislative referendum is available in all 50 states. The popular referenda allow voters to approve or repeal an already-passed law. When enough signatures are collected, the new law does not go into effect until after the contesting vote, and only if that vote loses.

Recall Nineteen states allow citizens to **recall** elected officials in the middle of their elected term. If the effort makes the ballot, and if over half of the voters vote to recall the official, he or she will be out of a job. On the same ballot for a recall election is a list of candidates to replace the official, if recalled. Probably the most famous recall election removed California Democrat Gray Davis and replaced him with body-builder-turned-actor Arnold Schwarzenegger. As of 2016, about three-fourths of recalls and recall attempts are directed at city or school board officials.

With most of the above citizen-oriented elections, a simple majority is the threshold for change. None of these measures exists at the national level, and states cannot pass laws allowing citizens to recall U.S. Senate or House members. For an up-to-date examination of these state-level methods, consult the National Council of State Legislatures.

Road to the White House

The U.S. presidential race is more complex and more involved than any other election. The road to the White House is long and arduous, with layers of rules and varying state election laws. A presidential campaign requires two or more years of advance work to make it through two fierce competitions—securing the party’s nomination and winning a majority of electoral votes. Before presidential hopefuls formally announce their candidacy, they test the waters. Most start early, touring the country and making television appearances. Some author a book, typically a memoir that relies heavily on their political philosophy. As the election year nears, announced and unannounced candidates compete in the **invisible primary** (sometimes called the media primary or money primary), as public opinion polls and comparisons of fundraising abilities begin to tell the score, long before the first states have voted.

An **incumbent** president—one already holding the office—seeking a second term has a much easier time securing the nomination than a challenger, because of the **incumbent advantage phenomenon**—the ability to use all the tools of the presidency to support candidacy for a second term. At the end of a president's second term, the field opens up again for candidates, since the president has served as long as he can.

Although being an incumbent does not guarantee reelection, the rate of reelection is high, about 80 percent. The chart below shows some of the factors in the incumbent advantage phenomenon.

ADVANTAGES OF AN INCUMBENT PRESIDENT IN AN ELECTION

- The incumbent is already very well known, having commanded the national spotlight as the head of the country for four years.
- The incumbent now has four years of experience doing the job and a record people can use to evaluate the president's performance.
- The incumbent still commands the "bully pulpit," the president's ability to use his position to get messages out to the American people.
- The president has already proven he can win elections.
- The president already has a network of campaign contributors who can raise a large amount of money.
- The president already has a network of campaign staff and volunteers who know how to do voter outreach.
- The president is already seen as "presidential," a quality other candidates have to earn.

Primaries and Caucuses

To win the presidential nomination, candidates must first win state **primary elections** or caucuses. Technically, citizen-voters in these contests cast votes for delegates to attend the party's national convention. With their vote, the citizen-voters advise those delegates whom to nominate at that national convention. The Republican and Democratic rules for nomination differ, but both require a majority of votes by the appointed delegates at the convention. To win the nomination, candidates must win the requisite number of these state contests from January into the summer.

Types of Primaries Today, most states hold a primary election. For years, the closed primary was standard. In a **closed primary**, voters must declare their party affiliation in advance of the election, typically when they register to vote. The **open primary**, used by about half of the states today, allows voters to declare party affiliation on Election Day. Poll workers hand these voters one party's ballot from which they select candidates.

The rarest primary is the **blanket primary**. California and other western states pioneered the blanket primary, which allows voters to cast votes for candidates in multiple parties. In other words, voters can cast a **split ticket**, picking Republicans in some races and Democrats in others. California voters

instituted a nonpartisan primary in 2010. This new runoff system includes all candidates—both party members and independents. The top two vote-getters, regardless of party affiliation, compete for office in the general election. The quest for inclusiveness created a unique dynamic that caused the press to dub it the “jungle primary” because the winners emerge through the law of the jungle—survival of the fittest without regard to party.

Iowa Caucuses Since 1976, the Iowa caucuses have taken place before any other contest. **Caucuses** differ from primary elections. Across Iowa, rank-and-file party members meet at community centers, schools, and private homes where they listen to endorsing speeches, discuss candidates, and then finally cast their vote before leaving the caucus. In comparison to standard elections, caucuses are less convenient and more public. This two-hour commitment makes attendance hard for some, especially those who might have to skip work. Others dislike the public discussion and the somewhat public vote (voters usually cast a vote at a table set aside for their candidate). So, those who do show up at caucuses tend to be more dedicated voters who hold strong opinions and often fall on the far left or far right of the ideological spectrum, thus causing more liberal or conservative figures to win nominations.

New Hampshire Primary New Hampshire follows Iowa on the primary schedule. Candidates travel the state and hold town hall forums. Candidates spend time and money to seek the endorsement of the *Manchester Union-Journal*. They campaign in grocery stores and on the streets of relatively small New Hampshire towns. During this time, the voters actively engage these presidential candidates. When asked their opinion on a particular candidate, a typical New Hampshire voter might respond, “I don’t know if I’m comfortable with him; I’ve only met him twice.”

This contest has such great influence that candidates cautiously frame their primary election night speeches to paint themselves as front-runners. In 1992, the news came to light that Bill Clinton had been part of a sex scandal when he was governor of Arkansas, but he survived his diminished poll numbers to earn a second-place spot in New Hampshire. During his speech late that night, Clinton confidently referred to himself as “The Comeback Kid.” This sound bite made its way into headlines that gave the impression that Clinton had actually won the New Hampshire primary.

Front-Loading Iowa and New Hampshire receive immense national attention during these events. Campaign teams and the national media converge on these states well in advance of Election Day. Hotels and restaurants fill with out-of-state customers bringing massive revenues. Politically, these states hold more influence than those that conduct their elections much later. This reality has brought on **front-loading**—states scheduling their primaries and caucuses earlier and earlier to boost their political clout and to enhance their tourism.

Following Iowa and New Hampshire, candidates then travel an uncertain path through several more states, hoping to secure enough delegates to win the nomination. In recent years, South Carolina has followed New Hampshire

and has served as a barometer for the southern voting bloc. A few weeks later, several states coincidentally hold primaries on **Super Tuesday** (so known because of the large number of primaries that take place on that day), when the nomination contest narrows and voters start to converge around fewer, or perhaps one nominee.

According to a Pew study, since 1980, voter turnout in presidential primaries has ranged from 15 to 30 percent of the voting-eligible population. In 2016, about 57.6 million primary voters or about 28.5 percent of the estimated eligible voters, voted in Republican and Democratic primaries. The year 2008 still ranks as having the highest primary turnout in American history, but turnout in 2016 was considerably higher than in 2012, when the incumbent Barack Obama was running for reelection. Voter turnout increases when there are open seats to fill.

Party Conventions

The party conventions have become less suspenseful in modern times because the nominees are determined long before the convention date. Both parties have altered rules and formulas for state delegation strength.

State Delegates States determine their convention delegates in different ways and hold them to differing rules. Some states give their delegates complete independence at the convention. Some presidential primaries are binding on “pledged delegates.” But even in those cases, states differ on how these delegates are awarded. Some operate by congressional district. Some use a statewide winner-take-all system, and some use proportional distribution for assigning delegates. For instance, if Candidate A receives 60 percent and Candidate B receives 40 percent of the popular primary vote, the state sends the corresponding percentage of delegates to the national gathering. The parties at the state and national level change their rules at least slightly every election cycle. The Democrats’ use of superdelegates (see page 464) also leaves room for uncertainty in the process.

Geographic Strength At the Democratic convention, strength has shifted away from delegations from the South and toward the North and West, while Republican voting strength rests in the southern and western states. Democrats take into account the strength of each state’s electoral vote and compare it to the record of how the state has cast votes for Democratic candidates in past general elections. Republicans place more value on the number of GOP representatives in Congress from those states and whether states have cast their electoral votes for Republican presidential candidates. In other words, Democrats give more delegates to large states, while Republicans give extra delegates to loyal states. Democrats have also instituted the idea of “fair reflection” to balance delegates by age, gender, and race in relation to the superdelegates or party elders.

The convention usually ends after three or four days of televised coverage, an acceptance speech by the nominee, and a balloon drop, followed by a bounce up in the polls for the winning candidate.

BY THE NUMBERS PRESIDENTIAL NOMINATIONS (SELECTED CONVENTIONS)			
Year & Convention	Candidates on First Ballot (in order of votes received)	Eventual Nominee	Required Ballots
1924 Dem	William Gibbs McAdoo, Al Smith, James Cox, John W. Davis	Davis	103
1932 Dem	Franklin Roosevelt, Al Smith, John Nance Garner	Roosevelt	4
1952 GOP	Dwight Eisenhower, Robert Taft, Earl Warren	Eisenhower	1
1960 Dem	John Kennedy, Lyndon Johnson	Kennedy	1
1968 Dem	Hubert Humphrey, Eugene McCarthy, George McGovern	Humphrey	1
1976 GOP	Gerald Ford, Ronald Reagan	Ford	1
1980 GOP	Ronald Reagan, John Anderson	Reagan	1
1992 Dem	Bill Clinton, Jerry Brown	Clinton	1

What do the numbers show? Who were the party nominees in selected years? How frequently is the leader on the first ballot the final nominee? How many ballots are usually required to choose the party's candidate? How frequently did a losing candidate receive the party's nomination in a later convention?

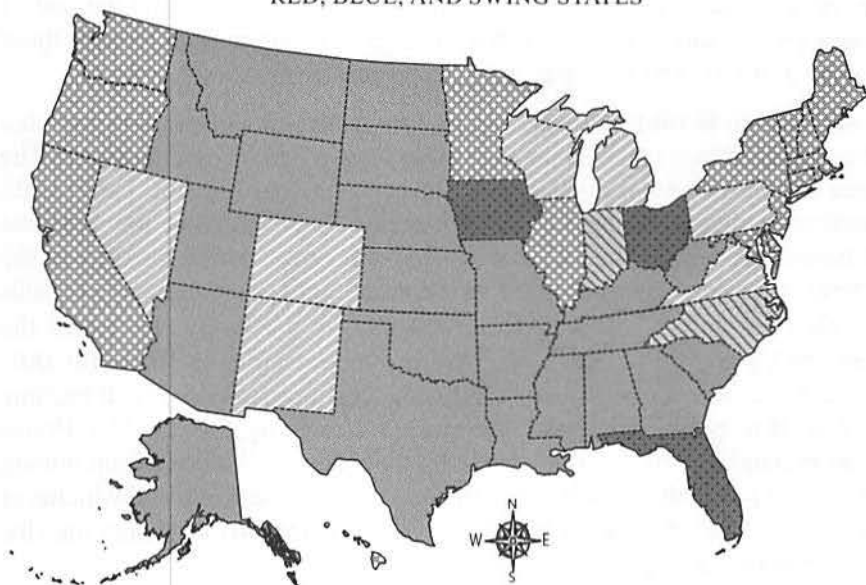
The General Election

The **general election** season starts after party nominations and kicks into high gear after Labor Day. Candidates fly around the country, stopping at key locations to deliver speeches. As the public and press begin to compare the two major party candidates, the issues become more sharply defined. Different groups and surrogates (spokespersons) support each candidate and appear on cable shows. The major party candidates debate, usually in three televised events over the course of several weeks. The vice presidential candidates usually debate once. Major newspapers endorse a candidate in their editorial pages. The media's daily coverage provides constant updates about which candidate is ahead and behind as measured by public opinion polls and campaign funding. By November, candidates have traveled to most states and have spent millions of dollars.






Swing States Where candidates spend those millions depends on where they have the best chance to influence outcomes. Republicans and Democrats live in all 50 states, but in some states Republicans have a long history of being victorious, while in others Democrats win most often. The patterns have changed over the course of the nation's growth and development, but in recent times the so-called "red states," those in which Republicans usually win, and "blue states," those in which Democrats usually win, have remained fairly constant.

However, some states have a less regular pattern. They are known as **swing states**, because the victories swing from one party to another in different elections. Candidates concentrate their campaign resources in those states. They travel to most of the states, meeting with wealthy donors to raise money. But they hold campaign events and spend advertising money in the swing states.

RED, BLUE, AND SWING STATES



Summary of results of the 2004, 2008, 2012, and 2016 presidential election:

-  States carried by the Republicans in all four elections
-  States carried by the Republicans in three of the four elections
-  States carried by each party twice in the four elections
-  States carried by the Democrats in three of the four elections
-  States carried by the Democrats in all four elections

If you were managing the campaign for a Republican presidential candidate in the 2020 election, in what states would you spend most of your television advertising budget? Why? If you were managing the campaign for a Democratic presidential candidate for the same election, which states would you be targeting with your advertising money? Why?

Electoral College The **Electoral College** system is both a revered and a frustrating part of the presidential election—one that shapes a presidential candidate's strategy. The system to elect the president has several features. The "college" is actually a simultaneous gathering of **electors** in their respective capital cities to vote on the same day. The framers included this system in Article II of the Constitution to temper public opinion and to allow the more informed statesmen to select a consensus president. State and federal law and party custom also affect the process. Each state receives the same number of electors (or electoral votes) as it has members of Congress; however, these electors cannot also be U.S. senators or representatives.

Alterations to the Electoral System Originally, the Constitution provided that each elector cast one vote for each of his top two choices for president. The winner became president and the runner-up became vice president. The Twelfth Amendment altered the system so that electors cast one vote for president and another for vice president. To win, candidates must earn a majority of the electoral votes. Since the **Twenty-Third Amendment**, Washington, D.C., adds three electoral votes. This brings the vote total to 538—435 replicating the House total, plus 100 to match the total Senate seats, plus the three for D.C. The candidate who earns 270 electoral votes, a simple majority, will become president. If no presidential candidate receives a majority, then the U.S. House of Representatives votes for president, by delegations, choosing from among the top three candidates. Each state casts one vote for president, and whichever candidate receives 26 states or more wins. The Senate then determines the vice president in the same manner.

Winner-Take-All Today, most states require their pledged electors (people already committed to a party's ticket) to follow the state's popular vote. Besides, electors are typically long-time partisans or career politicians who are ultimately appointed by the state party. The candidate who wins the **plurality** of the popular vote (the most, even if not the majority) in a given state will ultimately receive all of that state's electoral votes. This is known as the **winner-take-all** system. Only Nebraska and Maine allow for a split in their electoral votes and award electors by congressional district rather than on a statewide basis.

In early December, electors meet in state capitals and cast their votes. The ballots are transported to Washington in locked boxes. When Congress opens in January, the sitting vice president and speaker of the House count these votes before a joint session of Congress. Since most states now require their electors to follow the popular vote, the electoral vote total essentially becomes known on election night in November. Television newscasters typically show a U.S. map with Republican victories depicted in red and Democratic victories in blue. Soon after popular votes are tabulated, losing candidates publicly concede, and the winner gives a victory speech. The constitutionally required procedures that follow—states' electors voting in December and the Congress counting those votes in January—thus become more formal ceremony than suspenseful events.

Five times in American history, the winner of the popular vote did not win the electoral vote. Hillary Clinton's loss to Donald Trump in 2016 is the most recent example. This possibility has led some to criticize the Electoral College system. Others see the process as a way to ensure balance and to guarantee that a consensus candidate becomes president. Gallup has found that more than 60 percent of those polled want a constitutional amendment to change the electoral system, while only about 33 percent want to keep it in its current form. A proposed constitutional amendment to scrap the system and replace it with a popular vote has been offered repeatedly in Congress for years.

BENEFITS OF THE ELECTORAL COLLEGE	DRAWBACKS OF THE ELECTORAL COLLEGE
<ul style="list-style-type: none"> States retain their importance in electing the president. 	<ul style="list-style-type: none"> One candidate can win the popular vote and not win the electoral vote.
<ul style="list-style-type: none"> Candidates must campaign and seek votes in most states rather than only heavily populated states. 	<ul style="list-style-type: none"> Electoral vote strength is higher, per capita, in smaller states.
<ul style="list-style-type: none"> The practice guarantees a consensus president with broad support. 	<ul style="list-style-type: none"> The winner-take-all system discourages those who voted for the runner-up.
<ul style="list-style-type: none"> States retain primacy if the election goes into the House and Senate. 	<ul style="list-style-type: none"> If the election goes to the House and Senate, these delegations can vote independently of their states.

The 2016 Presidential Campaign

The unusual 2016 presidential campaign is perhaps the worst example to study for understanding norms and trends in voting, campaigns, and elections, since it was dominated by an unconventional candidate. It drew the attention of more than 20 viable candidates, brought an intense intra-party contest in both major parties, set a new record for money spent, sparked attempts to manipulate election rules to stop that unconventional candidate, and took the candidates down in the mud like no other public campaign in memory.

The Frontrunners Former Secretary of State Hillary Clinton was the heir-apparent for the Democratic nomination. She stepped down after one term at the State Department. She had survived criticism and an FBI investigation into her use of a personal email server for official State Department and classified communications and had been exonerated.

Also entering the race was Senator Bernie Sanders of Vermont. Sanders, a self-described democratic socialist and champion of the common person, promised to work for a \$15 minimum wage, free college tuition at public universities, and a universal health care policy. Four other viable candidates took part in early Democratic primary elections but dropped out after failing to gain much support. The nomination quest came down to a race between Clinton and Sanders, one the darling of the elite wing of the party able to raise huge amounts of campaign money, the other bragging about his \$27 average campaign donations.

On the other side was a field of 16 Republicans, some with executive experience or time in Congress. Young senators Ted Cruz (TX) and Marco Rubio (FL) entered the race. Governors Chris Christie (NJ), John Kasich (OH), and Jeb Bush (FL) all had a level of support. Dr. Ben Carson, a retired neurosurgeon from Michigan, also joined the race. New York real estate mogul and media hound Donald J. Trump, who had flirted with running for president more than once, announced in the summer of 2015 in an orchestrated descent down the escalator in golden Trump Tower that he was a candidate for the Republican nomination. The race was on.

Trump, Carson, and Cruz exchanged places for coming in first in the Iowa state polls leading up to the state's caucus vote, dwarfing the establishment candidates. It was clearly a year for the outsiders.

The pre-primary election campaigns were characterized by the enthusiastic chants for economic equality from Sanders crowds and Donald Trump's personal attacks against fellow Republican candidates. Trump's key promises involved tightening up the border with Mexico with a wall and repealing the North American Free Trade Agreement (NAFTA) (see page 404). He also found support among a Republican base by adopting a pro-gun, pro-life, pro-America position.

Caucuses and Primaries When Iowa held its caucuses in early February, Clinton beat Sanders by only two-tenths of one percent. In New Hampshire a week later, Sanders defeated her with 60 percent of the vote to Clinton's 38 percent. In the Republican contest, Cruz won the Iowa Republican caucuses with 28 percent, Trump came in second with 24 percent, and Rubio sneaked into third with 23 percent. In New Hampshire for the next round of rank-and-file party voters, Trump won with 35 percent, John Kasich came in second and kept his bid alive with 17 percent, and Ted Cruz came in third with 12 percent. The nation was in for a competitive nomination contest in both major parties.

Over the next few state primaries, Trump continually attacked whichever candidate seemed to pose a threat to him, creating insulting nicknames for them—"Low-energy Jeb," "Little Marco," and "Lyin' Ted." He continued to accumulate primary and caucus wins and was perhaps underestimated as a formidable presidential candidate.

The GOP contest got uglier. Trump pointed to a tabloid magazine story of Cruz's marital infidelity and alleged that Cruz's father, a Cuban immigrant, was somehow involved in JFK's assassination. With these tactics and others like them, Trump plowed over his opponents and clinched enough convention delegates after Indiana's primary vote on May 3 to become the Republican candidate. Cruz bowed out of the race that evening, and Kasich bowed out the next morning. Kasich never endorsed Trump; Cruz did so only after Trump won the nomination.

Nominees Over the remaining nine states, Trump, the only candidate still in the contest, received an average of 73 percent of the primary vote (some other candidates' names appeared on ballots, though they had withdrawn their candidacy). With some strong anti-Trump feelings within the Republican

Party, a few conservative leaders tried to stop Trump's nomination at the Cleveland convention with creative use of the technical delegate rules to nominate someone else. It didn't work.

For the Democrats, Clinton remained ahead of Sanders in the delegate count, but he won 23 of the 57 state and territorial contests through the spring. Though Clinton handily had the support of superdelegates and the delegates resulting from the primaries, in many ways Sanders won the heart and soul of the party. Despite his low average donation, he received more than \$200 million in total campaign contributions. But she was the presumptive nominee.

"We are all standing under a glass ceiling right now," she said from a New York stage, and declared that this would be the "the first time in our nation's history that a woman will be a major party's nominee for president." Clinton carefully enjoyed the moment but did not yet claim the nomination. Sanders had yet to concede, and the official vote would take place at the convention.

Before conceding, Sanders wanted some of his policy positions to be added to the Democratic platform. After a White House meeting with President Obama and five days to think things over, he personally gave Hillary a full endorsement in a high school gym in New Hampshire. "She will be the Democratic nominee for president," he declared, "and I intend to do everything I can to make certain she will be the next president." A number of his ideas on the minimum wage, environmental regulations, and drug policy did influence the Democratic platform.

Campaign for the General Election As the post-convention campaign began, a late August poll showed perhaps the widest gap between the candidates, Clinton with 45 percent to Trump's 33. That gap narrowed. The candidates' respective poll averages from September through Election Day had Clinton outpolling Trump by only 45.5 percent to 42.2 percent.

Third-Party Candidates Some minor party candidates entered the race. Former Republican New Mexico governor Gary Johnson was the Libertarian nominee, and Dr. Jill Stein of Massachusetts received the Green Party nomination, as she had in 2012. Former CIA official Evan McMullen gave Republicans against Trump someone to vote for, but his name appeared only on the Utah ballot.

The general election campaign put a Democrat candidate from the heart of D.C. politics against a bombastic and sometimes crude TV persona whose most recent public gig was firing people on NBC's *The Apprentice*. By the time Trump earned the nomination, he had insulted prior Republican nominee John McCain for getting captured by the enemy in Vietnam. Trump had also questioned the judicial ethics of a federal judge because he was Hispanic, and he had refused to denounce the support of a head Ku Klux Klansman. Meanwhile, his heavily-attended rallies were characterized by altercations between Trump supporters and Democratic interlopers and harsh threats to members of the media. The party's most recent nominee, Mitt Romney, had suggested Republicans nominate "anybody but Trump."

An Ugly Campaign What followed was what many termed “a race to the bottom.” Trump continued his unconventional and, to many, unstatesmanlike approach to campaigning, winning support among many middle-class workers who responded well to his America First ideology and the concern he expressed for average working persons who may have lost their jobs as industry steadily declined.

As of early October, Clinton’s campaign had spent \$145 million on TV commercials to Trump’s \$32 million. Trump, however, received an estimated \$200 million in free media. Top cable news reporters stood by at his rallies awaiting his grand entrance and anticipating some shocking behavior or pronouncement that would boost ratings. Meanwhile, his “Make America Great Again” message resonated with those who felt shut out by traditional politicians. He had strong support among independents, who believed the Democratic party had gone soft on illegal immigration and no longer protected the American worker. He had capitalized on a cultural patriotism that put him in reach of defeating Clinton if he focused on the right states.

Meanwhile Clinton took a jab at some of Trump’s supporters, referring to them as “a basket of deplorables.” This pejorative phrase delivered at an expensive Democratic Party fundraiser was likely directed at the pro-Trump Klansman and those ruffians hissing at reporters, but it was perceived by many as a broad-brush painting of any voter who did not support her. Trump strategists were able to turn the comment into another liberal elite’s uptown view of Middle America.

The October surprise came with the release of a decade-old *Access Hollywood* video of Trump on a hot mic bragging about how he could have his way with women, kissing and grabbing them. When this news broke, he apologized before quickly pointing to Bill Clinton’s dalliances, affairs, and aggressions toward women, suggesting that Hillary enabled this behavior. He invited Bill Clinton’s past victims to the next televised debate to showcase the former president’s behavior.

The campaign had sunk to a new low. Then, on October 28, then-FBI Director James Comey announced the FBI had come across a new batch of Clinton emails and felt compelled to let it be known that the FBI was obligated to examine these and warned that more investigation was possible. As it turned out, there was nothing new in those emails and the investigation was closed once again.

The Vote When citizen voters cast their popular votes on Tuesday, November 8, and such states as North Carolina, Florida, and Ohio went for Trump, the Clinton team became very nervous. Into the late evening and early morning, Trump won Pennsylvania, Wisconsin, and by the closest of margins, Michigan. The networks and the pundits started calling the election. In the final tally, Trump won 306 electoral votes to Clinton’s 232. However, Clinton’s large-margin successes in states like New York and California took her over the top in the national popular vote. Once provisional and absentee ballots were counted, Clinton had 3 million more votes than Trump did. She received 48 percent of the

national total, he received 46, and the minor party candidates split the remainder. But with the winner-take-all system and the razor-thin victories in the Rust Belt (parts of the Northeast and Midwest where industry is in decline), Trump took the Electoral College. In his 2:45 a.m. victory speech, the president-elect said in a partially scripted and partly ad-lib address, "Now it's time for America to bind the wounds of division; have to get together. To all Republicans and Democrats and independents across this nation, I say it is time for us to come together as one united people."

Congressional Elections

All House seats and one-third of Senate seats are up for election every two years. Federal elections that take place halfway through a president's term are called **midterm elections**. The midterm elections receive a fraction of the media attention and fewer voters cast ballots. The Council of State Governments reports that since 1972, voter turnout in midterm elections is on average 17 points lower than in presidential elections. The down-ballot federal races that take place on the same day as presidential elections are overshadowed by the big contest. Yet, in terms of policymaking, these campaigns are important and deserve attention.

To compete in a modern campaign for the U.S. House or Senate, a candidate must create a networked organization that resembles a small company, spend much of his or her own money, solicit hundreds of contributions, and sacrifice many hours and days. Senator Sherrod Brown of Ohio explains how a candidate "must hire a staff and make wise use of volunteers . . . craft a cogent, clear message . . . budget carefully in spending money on mail, radio, television and printed material . . . and be able to successfully sell the product—himself—to the public and to the media." Large campaigns divide these tasks into several categories, such as management, public relations, research, fundraising, advertising, and voter mobilization.

Incumbency As with presidential candidates, the incumbent in congressional elections has an advantage over a challenger. With rare exception, a congressional incumbent has a stronger chance of winning than the challenger.

The incumbent's financial and electoral advantage is so daunting to challengers that it often dissuades viable candidates from ever entering the race. House incumbents tend to win reelection more than 95 percent of the time. Senators have an incumbency advantage too, but theirs is not quite as strong. Incumbents capitalize on their popularity and war chest, showering their districts with mail and email throughout the congressional term. During campaign season, they purchase commercials and load up the district with yard signs while ignoring their opponent and sometimes refusing to take part in public debates.

Incumbents have several built-in advantages. Name recognition is a powerful factor. For two or more years, all federal incumbents have appeared

in the news, advocated legislation, and sent newsletters back to constituent voters. Nine out of ten voters recognize their House member's name, while fewer than six out of ten recognize that of the challenger.

Incumbents nearly always have more money than challengers because they are highly visible and often popular, and they can exploit the advantages of the office. They also already have a donor network established. **Political action committees (PACs)**, formal groups formed from interest groups, donate heavily to incumbents. PACs give \$12 to an incumbent for every \$1 they donate to a challenger.

Party leaders and the Hill Committees (see page 461) realize the advantage incumbents have and invariably support the incumbent when he or she is challenged in a primary. In the general elections, House representatives receive roughly three times more money than their challengers. Challengers receive a mere 9 percent of their donations from PACs, while House incumbents collect about 39 percent of their receipts from these groups.

A substantial number of incumbents keep a small campaign staff or maintain a campaign office between elections. Officeholders can provide services to constituents, including answering questions about issues of concern to voters, such as Medicare payments and bringing more federal dollars back home.

Certainly not all incumbents win. The single greatest predictor of an incumbent's loss is a poor economy while his or her party is in power. In hard economic times, the voting public holds incumbents and their party responsible.

In midterm elections, regardless of the condition of the economy, the president's party usually loses some seats in Congress. Based on results from five recent midterm elections, the president's party lost an average of 26.4 House seats and 3.6 Senate seats.

However, during presidential election years, congressional candidates can often ride the popularity of their party's presidential candidate. When a Democrat presidential candidate wins by wide margins, fellow Democratic congressional candidates down the ballot typically do well also. This is called the **coattail effect**.

Districts and Primaries Legislative elections in several states have resulted in one-party rule in the statehouse. When drawing congressional districts for the reapportionment of the U.S. House, these legislatures have gerrymandered congressional districts into one-party dominant units. (See page 106.) This situation dampens competitiveness in the general election. In 2016, only 33 House races, less than 10 percent, were decided by 10 points or less. Nearly three-quarters of all House seats were decided by 20 points or more.

These "safe" districts make House incumbents unresponsive to citizens outside their party, and they have shifted the competition to the primary election. Several candidates from the majority party will emerge for an open

seat, all trying to look more partisan than their competitors, while one or two sacrificial candidates from the minority party will run a grassroots campaign. When House incumbents do not act with sufficient partisan unity, candidates will run against them, running to their ideological extreme.

Campaign Strategies

Winning elections requires the expertise of professional consultants. These may include a campaign manager, a communications or public relations expert, a treasurer, an advertising agent, a field organizer, and a social media consultant. The campaign profession has blossomed as a consulting class has emerged. Staffers on Capitol Hill, political science majors, and those who have worked for partisan and nonprofit endeavors also overlap with political campaigns. Entire firms and partisan-based training organizations prepare energetic civic-minded citizens to enter this field that elects officials to implement desired policy.

Consultants will help candidates understand what voters think. A typical campaign spends about 3 percent of its resources on polling and surveys to gather this information. Candidates also want to build a base of support and mobilize members of their coalition to get to the voting booths.

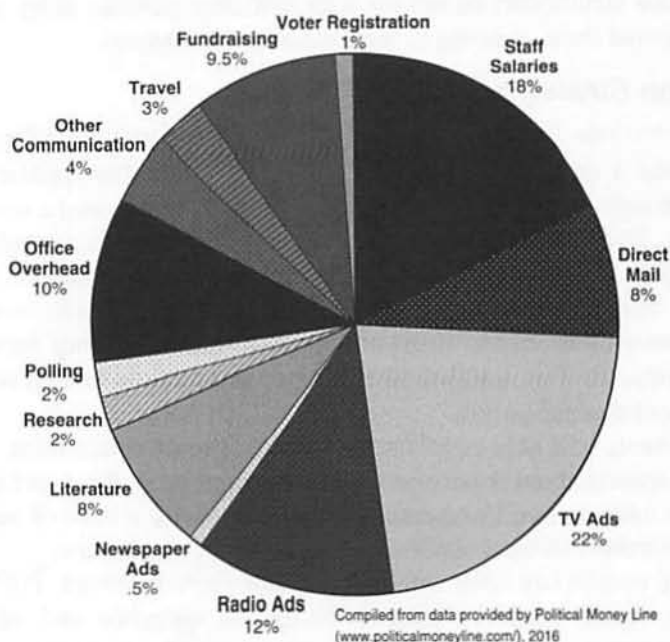
Polling results can help candidates frame their message. Polling helps determine which words or phrases to use in speeches and advertising. Campaigns occasionally use tracking polls to gain feedback after changing campaign strategy. They may also hold focus groups, and incumbents rely on constituent communication over their term. Candidates also keep an eye on Internet blogs, listen to radio call-in shows, and talk with party leaders and political activists to find out what the public wants. Campaigns also set up registration tables at county fairs and on college campuses. They gather addresses from voter registration lists and mail out promotional pieces that highlight the candidate's accomplishments and often include photos of the candidate alongside spouse and family. Campaigns also conduct robocalls, automated mass phone calls to promote themselves or to denounce an opponent.

Showcasing the Candidate Most voters, like most shoppers, make their decision based on limited information with only a small amount of consideration. For this reason, electronic and social media, television, and focus groups are essential to winning an election. A candidate's message is often centered on common themes of decency, loyalty, and hard work.

A typical campaign is divided into three segments: the biography, the issues, and the attack. Successful candidates have a unique story to tell. Campaign literature and television ads show candidates in previous public service, on playgrounds with children, on a front porch with family, or in church. These images attract a wide variety of voters. After the biography is told, a debate over the issues begins as voters shop for their candidate. Consultants and professionals believe issues-oriented campaigns motivate large numbers of people to come out and vote.

BY THE NUMBERS

Typical House Candidate Campaign Budget



Source: Paul S. Herrson, *Congressional Elections, 2008*

What do the numbers show? What are the chief expenses in a House campaign? What portion of a candidate's expenditures are for marketing/showcasing the candidate? What percent goes to support staff or some type of research?

Defining the Opponent Candidates competing for independent voters find it necessary to draw sharp contrasts between themselves and their opponents. An attack phase begins later in the race, often motivated by desperation. Underdogs sometimes resort to cheap shots and work hard to expose inconsistencies in their opponent's voting records. Campaigns do opposition research to reveal their opponent's missteps or any unpopular positions taken in the past. Aides and staffers comb over the *Congressional Record*, old interview transcripts, and newspaper articles to search for damaging quotes. They also analyze an opponent's donor list in order to spotlight special-interest donations or out-of-state money.

Debates As the election nears, candidates participate in formal public debates, highly structured events with strict rules governing response time and conduct. These events are risky because candidates can suffer from gaffes (verbal slips) or from poor performances. Incumbents and front-runners typically avoid debates because they have everything to lose and little to gain. Appearing on a stage with a lesser-known competitor usually helps the underdog. For races with large fields, those organizations sponsoring the debates typically determine which candidates get to participate. Their decisions are sometimes based on where candidates stand in the polls.

Television Appearances The candidate's campaign team also strategizes about appearances on television, either in news coverage or in a commercial. Veteran Democratic speechwriter and campaign consultant Bob Shrum laments, "Things are measured by when a campaign will go on television, or if they can and to what degree they can saturate the air waves." (See page 458 for more on a candidate's television strategy.)

Social Media Connecting to voters via social media has become essential in campaigning. Campaigns use Facebook as a way to connect with other Facebook users. Also, for a fee, Facebook offers consultants from their company to political groups to help reach voters, much as they offer consulting connections to a corporation. As Trump's key digital campaign manager, Brad Parscale, explained on *60 Minutes*, the Trump team took Facebook's offer of help; the Clinton team did not.

The Facebook platform and technology allow campaigns to microtarget—identify by particular traits and criteria—independent voters who could be persuaded and learn what might persuade them. Perhaps an intense, issues-oriented ad would sway their opinions, or maybe the color of a button might enhance the chances for a donation. Marketers use psychographics—profiles of a person's hobbies, interests, and values—to create image-based ads that would appeal to certain personalities. Different personality types will see different ads.

Some of the ad systems or strategies employed dark ads, those that go to a particularly selected small audience and then disappear. It is suspected that campaigns have used these for shaky or even false messages, as there is less of a trail to connect them to their source. (See page 460.)

Campaign Finance

"There are two things that are important in politics," asserted political boss Mark Hanna more than 100 years ago. "The first is money, and I can't remember what the second is."

Hanna was neither the first nor the last politician to realize that money is at the heart of politics. The entanglement of money and politics reached new levels when people with unscrupulous business practices became fixtures in the political process in the late 19th century in an effort to influence and reduce the federal government's regulation of commerce. The bulk of today's relevant campaign finance regulations, however, came about much later—in the early 1970s—and other laws and Supreme Court decisions followed.

In 1971, Congress passed the **Federal Election Campaign Act (FECA)**, which tightened reporting requirements and limited candidates' expenditures. Despite this law, spending in the 1972 presidential race between Richard Nixon and George McGovern reached \$91 million. As the Watergate scandal unfolded, Americans became disenchanted with their president and with the flow of money in national politics. The White House-sponsored Watergate break-in and subsequent investigation was not initially about money, but

as investigators and reporters looked closer at the scandal, Americans soon realized how much money was going through the campaign process and how donors had subverted the groundbreaking yet incomplete 1971 act. Congress followed up with the 1974 amendment to the FECA.

The 1974 law prevented donors from giving more than \$1,000 to any federal candidate and more than \$5,000 to a political committee in each election (primaries and general elections are each considered “elections”). It capped the total a candidate could donate to his or her campaign and set a maximum on how much the campaign could spend. The law created the **Federal Election Commission (FEC)** to monitor and enforce the regulations. It also created a legal definition for political action committees (PAC) making donations to campaigns, declaring that they must have at least 50 members, donate to at least five candidates, and register with the FEC at least six months in advance of the election.

KEY PROVISIONS OF THE FEDERAL ELECTION CAMPAIGN ACT

- Limited an individual's contributions to \$1,000 per election
- Limited a candidate's own contribution to \$50,000 per election
- Defined and regulated donations of political action committees (PACs)
- Created a voluntary public fund to assist viable presidential candidates

Types of PACs Campaign finance laws define several different types of political action committees, distinguished by how they are formed, how they are funded, and how they can disperse their funds. Some also have different limits on the donation amount from individuals per year or election.

Connected PACs Corporations, labor unions, and trade organizations are not allowed to use money from their treasuries to influence elections. However, they are allowed to form **connected PACs**—political action committees funded separately from the organization's treasury through donations from members—and make limited campaign contributions in that way. Connected PACs are also known as Separate Segregated Funds (SSF) because of the way the money is separated from the sponsoring organizations' treasuries. They cannot solicit donations from anyone who is not a member of the organization.

Nonconnected PACs These political action committees have no sponsoring organization and often form around a single issue. They can solicit funds from anyone in the general public and they can make direct donations to candidates up to limits set by law. Like the connected PACs, nonconnected PACs must register with the FEC and disclose their donors.

Leadership PACs are a type of nonconnected PAC. They can be started by any current or former elected official and can raise money from the general public. Though they cannot be used to fund the officials own campaigns, funds in a leadership PAC can be used to cover travel and other expenses for other candidates.

Super PACs These are the newest kind of political action committee, whose creation resulted from the Supreme Court ruling in *Citizens United v. FEC* and the U.S. District Court ruling in *Speechnow v. FEC*, both cases decided in 2010. The *Citizens United* ruling opened the door for corporations to make political contributions to a committee as long as that committee did not formally coordinate with a candidate. (See page 471.) The *Speechnow* ruling determined that those contributions should have no limit placed on them.

TYPE	FORMED BY	REQUIREMENTS	DONATION LIMITS	EXAMPLE
Connected PAC (SSF—Separate Segregated Funds)	Corporations, labor unions, trade groups	Can collect contributions only from their members; can donate directly to candidates	Strict	Coca-Cola Company Nonpartisan Committee for Good Government KochPAC
Nonconnected PAC	No sponsoring (connected) organization	Can collect from general public; can donate directly to candidates	Strict	National Rifle Association Emily's List
Leadership PAC (type of nonconnected)	Current or former elected official	Can collect from general public; can donate directly to candidates	Strict	Leadership Fund (Mitch McConnell)
Super PAC (independent expenditure-only committee)	Anyone	Can collect from anyone; cannot coordinate with candidates	No limits	Vote Latino Super PAC Cryptocurrency Alliance Super PAC

***Buckley v. Valeo* (1976)** One of the first challenges to FEC law came with the case of *Buckley v. Valeo*. In January 1975, a group of conservatives and liberals joined to overturn the Federal Election Campaign Act in the courts. Conservative New York Senator James Buckley teamed up with Democratic senator and past presidential candidate Eugene McCarthy, the American Civil Liberties Union, and the American Conservative Union to file suit against Secretary of the U.S. Senate Francis Valeo. They argued that the early 1970s law unconstitutionally limited free speech. The Court upheld the law's \$1,000 limit on individual donations and the \$5,000 limit on political action committee (PAC) donations, claiming such limits did not violate free speech guarantees. However, the Court also ruled that Congress cannot limit a candidate's donation to her own campaign or spending her own money, nor can it place a maximum on the overall receipts or expenditures for a federal campaign.

Fundraising

Since the passage of the early 1970s campaign finance laws, money and politics have gone hand in hand, yet most Americans have become concerned by one's influence on the other. Since the Federal Election Campaign Act created the Federal Election Commission to monitor donations and spending, the amount of cash that has flowed through federal elections has skyrocketed. Meanwhile, Congress has further regulated the campaign finance system while free-speech advocates have won concessions for less regulation.

Some candidates finance their own campaigns, but most rely on the party organization and thousands of individual donors for contributions. The size of a candidate's **war chest**, or bank account for campaigning, can play a role in determining victory or loss. The campaign for financial resources begins long before the campaign for votes. Fundraising allows candidates to test their chances. Those who can gather funds begin to prove a level of support that makes them viable. Most successful House candidates spend more than \$1 million during a two-year campaign. In more competitive districts with strong media markets, that number will rise. To raise that cash over a two-year period, candidates spend about one-fourth of their campaign schedule making personal phone calls and holding formal fundraisers. Senate candidates, because they are running statewide and may attract wealthier opponents, begin raising money much earlier than House candidates and devote more time to soliciting cash. Senate candidates spend an average of \$12 million and seek funds on a more national scale than House candidates.

The Internet became a campaign and fundraising tool in 1998. By 2002, 57 percent of all House candidates and virtually every Senate candidate used the Web or email to gather funds. This type of solicitation is free, compared with an average of \$3 to \$4 for every direct mail request. Candidates also hold parties, picnics, and formal dinners with higher-level officials or celebrities as guest speakers. The president or other high-level party leaders can attract many donors to such events. During the 2006 midterm campaigns, 23 Republican incumbents who hosted a visit by then-President George W. Bush raised 159 percent more money than GOP incumbents who did not host such a visit.

The Federal Election Commission

The FEC has unique structural traits so it can carry out several responsibilities. The president appoints the FEC's board of commissioners to oversee election law and the Senate approves them. This commission always has an equal number of Democrats and Republicans. The FEC requires candidates to register, or file for candidacy, and to report campaign donations and expenses on a quarterly basis. A candidate's entire balance sheet is available to the government and the public. The FEC has a staff of professionals that maintains these records and places the information online. The site www.fec.gov is a database that allows anyone to see which individuals or PACs contributed to the candidates and in what amounts.

The FEC also has a legal department that prosecutes candidates who do not follow the prescribed laws. From 1980 to 2005, the FEC was involved in more than 530 court cases and prevailed in 90 percent of the cases that went to court. From 2000 to 2013, the commission closed 2,623 cases and issued fines to candidates for late filing and non-filing that amounted to nearly \$5 million.

Matching Money After the 1976 Supreme Court ruling in *Buckley v. Valeo*, Congress and the Court ultimately reached consensus that unlimited donations make for unfair elections. Despite the Court ruling in *Buckley*, however, television advertising and money became more important in campaigns as interest groups, politicians, and lawyers found loopholes in the law.

Also in 1976, the federal government established a system to offer some public financial support for presidential candidates who met the qualifications. In this system today, everyone who files a tax return is offered a chance to contribute \$3 of taxes they already owe to be redirected to the presidential campaign fund. The federal government then uses that voluntarily directed money to match specified donations given to candidates in both the primary and general elections. In short, the federal government will match, dollar for dollar, individual donations of \$250 or less. To qualify, candidates must contribute no more than \$50,000 of their own money. They must also raise at least \$5,000 in each of 20 states in increments of \$250 or less. The guidelines for the federal matching money ensure that candidates have a broad base of support from smaller donors. Minor party candidates can qualify for matching money too, but only if the party's candidate won more than 5 percent of the vote in the prior election. This is the only public finance system for candidates across the United States.


The FECA only covered money going directly to and from a candidate's treasury. If a non-candidate wanted to spend money to impact an election—for example, to buy a radio ad for or against a candidate—there were no limits. **Hard money**, donations given directly to a candidate, could be traced and regulated. But **soft money**, donations to a party or interest group, was not tracked. Therefore the party could flood a congressional district with television ads that paint the opponent in a bad light, causing large, ultimately untraceable spending on electioneering at the end of a campaign. Unsurprisingly, soft money spending escalated.

Bipartisan Campaign Reform Act This situation brought greater attention to soft money's influence on elections and highlighted how much that influence was able to subvert the spirit of the 1970s reforms. Senators John McCain (R-AZ) and Russ Feingold (D-WI) had pushed for greater campaign finance regulations since the mid-1990s. After some modification, the **Bipartisan Campaign Reform Act (BCRA)** of 2002, also known as the McCain-Feingold law, finally passed the House with a 240–189 vote and the Senate with 60–40 vote, and President Bush signed it. The act banned soft money contributions to the national parties, increased the limits on hard money donations to \$2,000 from individuals with an adjustment for inflation, \$5,000 from PACs, and \$25,000 from the national parties per election cycle. The law

also placed an aggregate limit on how much an individual could donate to multiple candidates in a two-year cycle.

The BCRA prohibited corporations, trade associations, and labor organizations from paying for electioneering communications on radio or TV using campaign treasury money within 60 days of the general election and 30 days of a primary. To clear up who or what organization is behind a broadcasted advertisement, the McCain-Feingold law also requires candidates to explicitly state, “I’m [candidate’s name] and I approve this message.” That statement must last at least four seconds.

Though the law was dubbed bipartisan, the vote in Congress and the reaction to the law has been somewhat partisan, with more Democratic support than Republican. It was challenged immediately by a leading Republican in the courts, and largely upheld. The 2010 case of *Citizens United v. Federal Election Commission (FEC)*, however, overturned key parts of the law.



MUST-KNOW SUPREME COURT DECISIONS: *CITIZENS UNITED V. FEC* (2010)

The Constitutional Questions Before the Court: Does the Bipartisan Campaign Reform Act’s (McCain-Feingold law) donation disclosure requirement violate the First Amendment’s free speech clause, and is a negative political documentary that never communicates an expressed plea to vote for or against a candidate subject to the BCRA?

Decision: No and Yes for Citizens United, 5:4

Before *Citizens United*: *Buckley v. Valeo* (1976) upheld the limits on campaign contributions from individuals (\$1,000) and PACs (\$5,000) but ruled that candidates could contribute unlimited funds from their own money to their campaigns. It also ruled that there was no limit on total revenue or expenditures for campaigns.

Facts: The BCRA prevented corporations or nonprofit agencies from engaging in “electioneering communications,” primarily TV and radio campaign ads, 60 days before the general election. In 2008, the conservative group Citizens United produced *Hillary: The Movie*, a critique meant to derail Hillary Clinton’s chance for the presidency. The law prevented the film’s airing, regarding it as “electioneering communications,” but the group appealed to the Supreme Court. The opportunity to broadcast the movie had passed by the time the Court issued its ruling, which has had a dramatic impact on campaign financing.

Reasoning: The Court ruled that part of the BCRA violated the First Amendment’s free speech clause and that corporations, labor unions, and other organizations could use funds from their treasuries to endorse or denounce a candidate at any time, provided ads are not coordinated with any candidate. The majority opinion reasoned that the limitations amounted to censorship.

The Court reasoned further that just because a PAC or any entity entitled to free speech supports a candidate via advertising, that candidate does not necessarily

owe anything to that PAC. There's no assumption that the donation is buying a favor from the candidate, which in any event is already criminal and punishable by statute.

The Court's Majority Opinion by Mr. Justice Anthony Kennedy, joined by Chief Justice John G. Roberts and Justices Antonin G. Scalia, Samuel A. Alito, and Clarence Thomas:

The law before us . . . makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election . . . These prohibitions are classic examples of censorship. . . . Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. . . . If [this part of the law] applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. . . .

For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. . . .

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

The Court, like the country, split along ideological lines. Those dissenting argued that corporations are not people and do not have the same rights, and that limiting corporate money in local and national elections would be favorable to fair, democratic elections.

Dissenting Opinion by Mr. Justice John Paul Stevens, joined by Justices Ruth Bader Ginsburg, Stephen G. Breyer, and Sonia Sotomayor:

The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. . . .

It is simply incorrect to suggest that we have prohibited all legislative distinctions based on identity or content. Not even close. . . . We have, for example, allowed state-run broadcasters to exclude independent candidates from televised debates. We have upheld statutes that prohibit the distribution or display of campaign materials near a polling place. . . . And we have consistently approved laws that bar Government employees, but not others, from contributing to or participating in political activities. . . .

The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. . . .

The Court's blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process.

Since *Citizens United*: In 2014, in *McCutcheon v. FEC*, the Supreme Court ruled that the limit on how much a donor can contribute over a two-year election cycle was unconstitutional. To stay within that limit, the plurality of the Court argued, donors who could afford to give the maximum amount to a number of candidates would have to rule out some candidates and causes they might also wish to support. In that way, the Court ruled, their freedom of expression was unconstitutionally limited.

Political Science Disciplinary Practices: Analyze and Interpret Supreme Court Decisions

As you analyze the ruling in *Citizens United v. FEC* (or any other court case or law), compare it to other related cases or laws. Identify specific categories for comparison. If you are comparing Supreme Court cases, for example, the categories for comparison might include the constitutional principle at stake, the facts of the case, the decision, the makeup of the court, the historic time of the decision, and dissenting opinions, among others. Creating these specific and relevant categories will help you sharpen the comparisons you make.

Apply: Complete the activities below.

1. Explain the Court's ruling in *Buckley v. Valeo*.
2. Describe the facts of the *Citizens United v. FEC* case and the congressional regulation at issue.
3. Describe the claim the group Citizens United made about BCRA.
4. Explain how the Court's reasoning in *Citizens United* led to its ruling.
5. Relate the ideas expressed in *Federalist No. 10* to the decision in *Citizens United*.
6. Identify specific categories you can use as a basis of comparison between the case of *Citizens United* and the case of *Buckley*, and then describe similarities and differences.

Impact of Citizens United

Debates over free speech and competitive and fair elections have increased since *Citizens United*. Free speech advocates, libertarians, and many Republicans view most campaign finance regulations as infringements on their freedoms, so they hailed the ruling. Others agreed with President Obama when he criticized the ruling at his 2010 State of the Union address as a decision that would "open the floodgates to special interests."

Dark Money In addition to allowing ads by outside or soft money groups immediately before an election, the Court's ruling also allowed for unlimited contributions to these groups from individual citizens and other organizations. This dark money has penetrated political campaigning, causing a lack of transparency about where the money originates. Even though political ads must express who is behind them, determining exactly where the money ultimately comes from is hard to do.

"*Citizens United* changed the culture at the same time that it changed the law," according to Zephyr Teachout, Fordham University law professor and author of *Corruption in America*. "Before *Citizens United*, corporate or individual money could be spent with a good enough lawyer. But after *Citizens United v. FEC*, unlimited corporate money spent with intent to influence was named, by the U.S. Supreme Court, indispensable to the American political conversation."

The ruling also concentrates who dominates the political discussion. Five years after the ruling, the Brennan Center at New York University found that of the \$1 billion spent, about 60 percent of the donations to PACs came from 195 people or couples. More recently, an analysis by OpenSecrets.org found that during the 2016 election cycle, the top 20 individual donors gave more than \$500 million to PACs. The 20 largest organizational donors also gave a total of more than \$500 million to PACs. And more than \$1 billion came from the top 40 donors. About one-fifth of political donations spent in all federal elections in 2016 came from dark money sources.

In the 2016 election cycle, special interests spent at least \$183.5 million in dark money, up from \$5.2 million in 2006. Of that, liberal special interests spent at least \$41.3 million, or 22.5 percent; conservatives spent most of the rest.

Though Democrats are more prone to use *Citizens United* as a rallying cry against corporate special interests, Democrats have also benefitted from the ruling. As Sarah Kleiner of the Center for Public Integrity points out, "Many Democrats have taken full advantage of the fundraising freedoms *Citizens United* has granted them." Candidate Hillary Clinton, especially, "benefited from a small army of super PACs and millions of dollars in secret political money." More specifically, in 2016 the Clinton presidential campaign received 18 percent of its contributions, about \$220 million, from such sources, whereas Trump received 12 percent of his overall contributions, or roughly \$80 million, from PACs.

REFLECT ON THE ESSENTIAL QUESTION

Essential Question: How do electoral processes and campaign finance laws affect political participation? On a separate paper, complete a chart like the one below to gather details to answer that question.

Issue	Effect on Political Participation
Electoral Process	
Campaign Finance Laws and Rulings	

KEY TERMS AND NAMES

Bipartisan Campaign Reform Act (BCRA) (2002)/507	front-loading/490	polling place/487
blanket primary/489	general election/492	precincts/487
<i>Buckley v. Valeo</i> (1976)/505	hard money/507	primary election/489
caucuses/490	incumbent/489	recall/488
<i>Citizens United v. FEC</i> (2010)/508	incumbent advantage phenomenon/489	referendum/488
closed primary/489	initiative/487	soft money/507
coattail effect/500	invisible primary/488	split ticket/489
Electoral College/494	Iowa caucuses/490	Super Tuesday/491
electors/494	matching money/507	Twenty-Third Amendment/494
Federal Election Campaign Act (FECA)/503	midterm elections/499	voter registration/486
Federal Election Commission (FEC)/504	New Hampshire primary/490	war chest/506
	open primary/489	wards/487
	plurality/494	winner-take-all/494
	political action committees (PACs)/500	

MULTIPLE-CHOICE QUESTIONS

1. Which of the following is an accurate comparison of congressional and presidential campaigns?

	Congressional	Presidential
(A)	Are conducted at three-year intervals	Are conducted every four years
(B)	Have lower turnouts than presidential elections	Are decided by the Electoral College
(C)	Nominate candidates at national conventions	Second-highest vote-getter in primaries becomes vice presidential candidate
(D)	Have candidates that compete for federal matching money	Can accept higher donations from individuals than congressional candidates

Questions 2 and 3 refer to the table below.

CALIFORNIA PRESIDENTIAL PRIMARY ELECTION RESULTS, 2016 (TOP FIVE VOTE-GETTERS)					
Democrat	Total Votes	Percent	Republican	Total Votes	Percent
Hillary Clinton	2,745,302	53.1	Donald Trump	1,665,135	74.8
Bernie Sanders	2,381,722	46	John Kasich	252,544	11.3
Willie Wilson	12,014	0.2	Ted Cruz	211,576	9.5
Michael Steinberg	10,880	0.2	Ben Carson	82,259	3.7
Roque De La Fuente	8,453	0.2	Jim Gilmore	15,691	0.7
Total Democratic votes	5,158,371	100	Total Republican votes	2,227,205	100

Source: California Secretary of State

2. Which of the following statements is reflected in the data in the table above?
- (A) Hillary Clinton received more California primary votes than Bernie Sanders or Donald Trump.
 - (B) More voters participated in California's Republican primary than in the state's Democratic primary.
 - (C) John Kasich was the runner-up candidate in the Democratic field.
 - (D) Based on this election outcome, Donald Trump will receive all the state's electoral votes.

3. Based on the data in this table, which statement is accurate?
- (A) In California, Donald Trump likely earned a greater proportion of Republican convention delegates than Hillary Clinton earned Democratic convention delegates.
 - (B) The outcome of this state election will have no impact on which candidates receive their party nominations.
 - (C) Regardless of the second-place candidate's political ideology or personalities, the winning nominee will choose that person as his or her vice presidential running mate.
 - (D) Because California holds the first primary election, this outcome will have great impact on subsequent primary elections.
4. To find how much money a political candidate spent on a campaign for U.S. House, Senate, or the presidency, which agency should one consult or contact?
- (A) Federal Election Commission
 - (B) Internal Revenue Service
 - (C) Federal Bureau of Investigation
 - (D) Office of Management and Budget
5. The words "I'm Ready for Hillary" appeared on bumper stickers and T-shirts during the 2016 presidential campaign. Which of the following campaign messages do those words convey?
- (A) The candidate's name recognition and an argument for progress
 - (B) The candidate's foreign policy stance
 - (C) The candidate's pick for vice president
 - (D) The candidate's compassion and approach to governing

Question 6 refers to the table below.

MICHIGAN 2016 ELECTION NIGHT RESULTS			
Candidate	Party	Votes	Pct
Donald Trump	Republican	2,279,543	47.3%
Hillary Clinton	Democrat	2,268,839	47.0%
Gary Johnson	Libertarian	172,136	3.6%
Jill Stein	Green	51,463	1.1%
Others	Independent, U.S. Taxpayers	50,070	1.0%

Source: *New York Times*

6. Which of the following most accurately describes the information in the table?
- (A) The table shows the percentage of voting age population in Michigan voting for each candidate.
 - (B) The table shows the percentage of the voter-eligible population in Michigan voting for each candidate.
 - (C) The table shows the percentage of votes cast for each candidate.
 - (D) The table shows the increasing influence of Libertarian candidates.
7. Which type of primary election provides the greatest choice for voters?
- (A) Blanket primary
 - (B) Open primary
 - (C) Closed primary
 - (D) Caucus
8. The Bipartisan Campaign Reform Act
- (A) lowered limits on soft money
 - (B) lowered limits on hard money
 - (C) raised limits on soft money
 - (D) raised limits on hard money
9. Which of the following is an accurate comparison of challengers and incumbents?

	Challengers	Incumbents
(A)	Tend to win in a bad economy	Spend less money
(B)	Have an easier time raising money because of their fresh appeal	Are viewed skeptically because they have an open voting record
(C)	Have generally fewer resources than incumbents	Use the tools of their office to help support their candidacy
(D)	Mainly use federal matching money	Coordinate with Super PACs



Source: CartoonStock.com

10. Which message does the cartoonist convey?
- (A) The free speech considerations in Super PAC ads help strengthen democracy.
 - (B) Super PAC ads try to be truthful even if they put forward a strong point of view.
 - (C) A good Super PAC ad promotes a candidate and disparages opponents.
 - (D) Super PAC advertising is likely highly untrue.

FREE-RESPONSE QUESTIONS

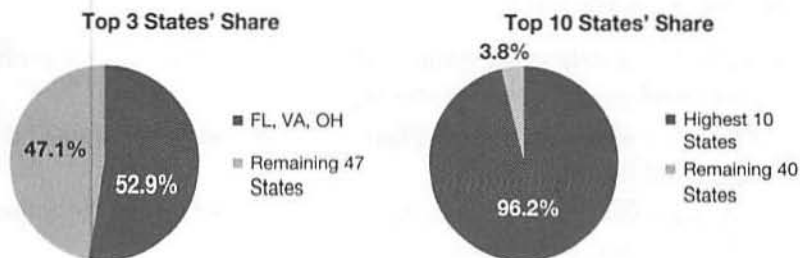
1. "I confess to having supported the ACLU position in *Buckley*. As the corrosive effects on democracy of uncontrolled campaign spending became increasingly clear, however, I joined several former ACLU leaders . . . in opposing the organization's campaign finance position [on *Citizens United* that the Bipartisan Campaign Reform Act limited free speech]. We have argued . . . that spending massive amounts of money during an election campaign is not "pure" speech when the spending level is so high that it drowns out competing voices . . . ; that a compelling interest in equality justifies preventing wealthy speakers from buying up an unfair proportion of the speech . . . that massive campaign spending by 'independent' entities poses a serious risk of postelection corruption; and that corporations lack the attributes of conscience and human dignity that justify free-speech protection."

— Burt Neuborne, *The Nation*, March 21, 2012

After reading the scenario, respond to A, B, and C below:

- (A) Describe the political behavior that has resulted from the *Citizens United* ruling, according to the author.
- (B) In the context of the scenario, explain how the behavior described in part A affects elected officials.
- (C) In the context of the scenario, explain how the effect on elected officials can be influenced by linkage institutions.

TV Ad Spending by State
(2012 Presidential Election Cycle)



2. Use the information graphic to answer the questions.
- (A) Describe the information presented in the graphs.
- (B) Describe differences in the television ad spending in different states, and draw a conclusion about the reasons for those differences.
- (C) Explain how the patterns of ad expenditures demonstrate a strength or weakness of the election process.
3. After passage of the Bipartisan Campaign Reform Act (BCRA) in 2002, groups including the Democratic Party of California, the National Rifle Association, and individuals, including Mitch McConnell who was at the time the Senate Majority Whip, brought a case against the Federal Election Commission arguing that the provisions of BCRA violated constitutional protections of free speech. In 2003, the Supreme Court upheld most of the law in its ruling in *McConnell v. FEC*. It reasoned that since the law's ban was on soft money, which could not be used to help elect a candidate directly but rather was spent on party activities such as get-out-the-vote efforts, then its limits on free speech were minimal. It argued further that even if ads paid for by unions and corporations were not shown to lead to corruption, to protect the legitimacy of its institutions, the state had an interest in protecting against "both the actual corruption threatened by large financial contributions and . . . the appearance of corruption."

- (A) Identify the constitutional clause that is common to both *McConnell v. FEC* (2003) and *Citizens United v. FEC* (2010).
- (B) Based on the constitutional clause identified in part A, explain why the facts of *Citizens United v. FEC* led to a different holding than the holding in *McConnell v. FEC*.
- (C) Describe an action that interest groups who disagree with the holding in *Citizens United v. FEC* could take to limit its impact.
4. Develop an argument that explains whether or not *Citizens United v. FEC* (2010) should be overturned.

In your essay, you must:

- Articulate a defensible claim or thesis that responds to the prompt and establishes a line of reasoning
 - ♦ Support your claim with at least TWO pieces of accurate and relevant information:
At least ONE piece of evidence must be from one of the following foundational documents:
 - First Amendment of the Constitution
 - *Federalist No. 10*
 - ♦ Use a second piece of evidence from another document from the list above or from your study of modern campaigns and elections
- Use reasoning to explain why your evidence supports your claim/thesis
- Respond to an opposing or alternative perspective using refutation, concession, or rebuttal



WRITING: USE CONCISE LANGUAGE

Keep your writing as crisp and clear as possible. To improve the clarity of your writing, eliminate wordy phrases and avoid inflated language. For example, instead of the wordy phrases “due to the fact that” and “in light of the fact that,” use the simpler, clear word “because.” And instead of such inflated language as “is cognizant of” and “is desirous of” use the simpler and clearer “knows” and “wants.”