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Campaign Finance and Corruption

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By

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Abstract

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Master of Arts in Political Science

This paper explores the intersection of campaign finance and corruption in the United States. The historical record on campaign finance laws prove that corruption has been a concern when it comes to how elections are funded. Yet, laws which regard corruption within campaign financing have primarily focused on individuals and issues such as bribery and quid pro quo. This focus misses a key issue, which is corruption at the institutional level. Understanding how corruption in campaign finance works at the institutional level provides us a much clearer picture of the depth of this problem. This paper will trace the concerns courts have had with the matter of corruption as it pertains to campaign finance and will examine traditional conceptualizations of corruption in campaign finance. In addition, this paper will analyze how contemporary considerations of corruption, which stress a focus on institutional corruption, and provide a better lens for understanding corruption in campaign finance. Specifically, this paper will focus on

public interest, the culture of impunity, and corruption of class power and influence to explain how corruption intersects with campaign finance in the United States.

I. Introduction

On August 21, 2018, Representative Duncan Hunter (R-CA) was indicted on federal charges for spending more than $250,000 of campaign funds on personal international travel, lavish restaurant and theatre expenses, dental work, his children's tuition, and much more (Solis, 2018). On March 17, 2020, Hunter was sentenced to 11 months in federal prison for corruption charges due to the misuse of campaign funds for personal use, and on December 22, 2020, President Donald Trump pardoned Hunter for his crimes (Stone, 2020). In general, when the topic of campaign finance is discussed, the idea of corruption is often overlooked, or altogether ignored. The example of Hunter illustrates how corruption in campaign finance has been historically personalized to the individual level, thus making it difficult to root out. The laws regarding campaign finance have been flexible in the last fifty years, particularly for anonymous campaign donors as well as many politicians and their campaigns. Since the 2010 United States Supreme Court decision in *Citizens United v. FEC*, Americans have witnessed record setting numbers in the hundreds of millions of dollars being used in each federal election, much of it from individuals that exceed federal limitations on individual donations by way of legalized anonymous donations (Clements, 2014; Hansen, et al., 2015; Mayer, 2016). This is important because it puts substantive democratic ideals in danger because the institutions, such as the Supreme Court, permit a legal avenue for corporations and wealthy campaign donors to flood elections with money in a way that takes away from the value of individual voters and their votes.

This paper explores the intersection of campaign finance and corruption in the United States. The historical record on campaign finance laws suggests that corruption has been a concern when it comes to how elections are funded. Yet, laws which regard corruption within

campaign financing have primarily focused on individuals and issues such as bribery and quid pro quo. This focus misses a key issue – corruption at the institutional level. Understanding how corruption in campaign finance works at the institutional level provides us a much clearer picture of the depth of this problem. In this paper, I will focus on the ways in which campaign donors and politicians are profiteering with public power at the expense of public interest, while being protected by structures of impunity in order to benefit the power class with privatized benefits, which is a problem for substantive democracy (Johnston, 2005, 12; Teachout, 2014, 51; Whyte, 2015, xx; Cockcroft & Wegener, 14). The way power is concentrated in the American system of campaign finance puts wealthy donors and politicians at the top of the power structure along with the institutions shows that power is concentrated in politics, and this paper will analyze how this structure is corruptly influenced. According to the United States legal code, today's campaign finance laws provide the loopholes that allow corporations and individuals to subvert contribution limits to campaigns that buffer corruption from the institutional structure as we know it, and thus provides the basis for understanding the campaign finance system as corrupt.

Paying special attention to the ways in which money influences political outcomes in elections and in policy, I will conceptualize corruption as it relates to the laws in the United States by using the definition new scholars have used that shift the focus of corrupt behavior from the individual to the institutions by creating laws that have negative ramifications for the greater good. In what follows, I will review case law in order to show how the United States Supreme Court's attention to corruption has shifted over the years, and subsequently, overlooked when it comes to the latest campaign finance laws. These laws as they relate to campaign finance have given American corporations legal identities as an individual. One could argue that

corporations actually have more rights than individuals do in terms of political contributions in hard or soft money, directly or indirectly. The laws have become so relaxed and loosely regulated which has enabled corporations to band together in the form of Super PACs with the ability to spend dark money – funds contributed to the Super PAC that cannot be traced back to the individuals or corporations because campaign finance laws protect their anonymity. The next section reviews the relevant literature on corruption and campaign finance by tracing the concerns courts have had with the matter of corruption as it pertains to campaign finance. This review of the literature will be followed by a brief explanation of how corruption will be conceptualized in this paper, and a discussion on the three important determinants for analyzing corruption in campaign finance at the institutional level: public interest, impunity, and the power class. Summarily, this paper will conclude that campaign finance, particularly in terms of how United States institutions provide protection to the process of campaign finance, leads to corruption within in the United States political system.

II. Literature Review

For the past century, American political scientists, advocates, and some politicians have tried to determine a way to curb corrupt influences in campaign spending. In order to understand the language of corruption as it relates to campaign financing, we first have to define corruption in the way that the law has interpreted it in the last century of campaign finance laws. The Courts have regarded *corruption* as applied to individuals in terms of personal dishonesty and the engagement of bribery, quid pro quo, and using public power to gain personal benefit (Shumer, 1979, 6-7; Strauss, 1994, 1373; Hellman, 2013, 1387). Since *Buckley v. Valeo*, the Courts have focused primarily on quid pro quo as the main ingredient for corruption as it related to campaign finance. The new scholarship of corruption explains that this individual focus is a mistake and that we need to center the focus of corruption on the institution (Hellman, 2013; Teachout, 2014; Whyte, 2015; Amit, et al., 2021). In order to do that, we first need to understand some of the legal aspects surrounding campaign finance laws and how their laws treated corruption in the United States since before the Gilded Age.

Early Campaign Finance Laws

The relationship between campaign finance contributions and corruption can be traced back to the early nineteenth century to a time when politicians funded their own campaigns. In 1828, Andrew Jackson organized the spoils system, a structure of political patronage where those who supported the politician, usually his friends or more particularly, the most prominent campaign donors would be awarded with jobs within the government if/when the politician was elected. One way the spoils system relates to campaign finance donations was because prospective government employees would be required to donate a portion of their government salary to the party's future campaign fund (Mutch, 1988, xvi). Political patronage was well-

practiced for nearly six decades when, in 1883 in an attempt to quell the corrupt nature of the spoils system, the government passed the Pendleton Civil Service Act which mandated that qualifications for government employment were then based on merit, not patronage (Hoogenboom, 1959, 301, Teachout, 2014, 176-177).

Corporate contributions in campaign finance began in the 1850s with what was referred to as the *Pennsylvania Idea*, when Republican party leader Simon Cameron wanted to use corporate money to help preserve majorities in state legislatures, because at the time they had the power to appoint United States Senators prior to the ratification of the Seventeenth Amendment (Nichols & McChesney, 2013, 18; Shean, 2016). This practice led the public to believe that elected officials were being paid for by the highest monetary contributors – a practice that peaked in 1896 when Mark Hanna, the Chairman of the Republican Party solicited the previously unparalleled amounts of $3 million (well over $70 million by today's standards) from wealthy elites for each of William McKinley's election victories in 1896 and 1900 as a result of what was referred to as the "corruption fund" (Johnston, 2005, 64; Teachout, 2014, 181). In 1905, Theodore Roosevelt asked Congress to consider legislation that would prohibit corporations from making federal political contributions in order to combat bribery and corruption. In 1907, in order to respond to corruption by way of funding campaigns, the Tillman Act marked the first federal legislation that barred corporations from donating funds towards national political campaigns (Johnston, 2005, 64; Jost, 2010, 465-466; Nichols & McChesney, 2013, 20-21, Teachout, 2014, 188; Mayer, 2017, 228-229). The legislation was straightforward and considered a bright-line rule against corrupt practices in corporate entities contributing to campaigns – prosecutors were not required to prove corruption, only that corporations contributed to a campaign (Teachout, 2014, 188). However, this legislation contained significant

loopholes were found due to the lack of enforcement or regulation of the Tillman Act – corporations would designate bonus money to employees for the sole purpose of donating that money to campaigns (Berg, et al., 1976, 103-104; Nichols & McChesney, 2013, 21).

As a response to the loopholes, Congress found it necessary to introduce campaign financing disclosure laws in the Publicity Act, which required parties and campaigns to disclose the names and the dollar amounts of their donors and donations. The Publicity Act was enacted in 1910 with amendments being added over the next several decades that were designed to address the manipulation of elections from corporate interests (Mutch, 1988, 8; Nichols & McChesney, 2013, 22). The Publicity Act required party committees that were operating in more than one state to report their financial expenditures on campaigns regarding candidates for the House of Representatives (Cantor, 2002, 59). In 1911, the first amendment to the Publicity Act extended the disclosure requirements to candidates for the U.S. Senate. The amendment included spending limits, which was not in the original bill of 1910 (Cantor, 2002, 59). But spending limits would be rejected by the Supreme Court in 1921 in the question surrounding the authority of Congress and whether they had the power to regulate political party primaries or conventions in order to nominate candidates; the court found that this power was not extended by their power to regulate the manner of holding elections (Library of Congress, 1921, 258).

Four years later, as concerns about corruption in campaign finance intensified, Congress reenacted spending limits in a new amendment to the Publicity Act that sought quarterly disclosures from all election committees to publicly divulge the names of contributors and how much they donated, which became known as the Federal Corrupt Practices Act of 1925 (Mutch, 1988, 21; Cantor, 2002, 60; Johnston, 2005, 64; Nichols & McChesney, 2013, 23; Teachout, 2014, 188). The disclosure requirements were again challenged in the U.S. Supreme Court in

1934 and this time was upheld. The Court ruled that because election committees were accepting monetary contributions for the purpose of influencing the election of a candidate for federal public office, that such committees necessitated a chairman and treasurer in order to accept donations; and the knowledge of such donations was held obligatory to public disclosure in order to prevent corruption by use of money in order to influence elections (Library of Congress, 1934, 548). The idea of influencing federal elections was seen by the Court as corrupt behavior (Teachout, 2014, The spending limits requirement was again challenged in the Supreme Court, who decided in 1941, that spending limits should be upheld, citing the necessary and proper clause of Article I in the U.S. Constitution and finding that Congress had the authority to make laws that were necessary and proper in the manner of elections (Library of Congress, 1941,311). At the height of the Federal Corrupt Practices Act, it was necessary and proper for Congress to regulate campaign financing, particularly as it related to corruption.[1]

In the 1970s, the Watergate scandals showed deep-rooted problems in how elections in the United States were financed, with a number of instances of corporations paying for favors from the government by way of campaign contributions (Simon, 1998, 167). Because the Watergate Scandal shed light on the existence of corruption and gift giving in the federal government, transparency became a focal point in order to minimize any corrupt behavior (Berg, et al., 1976, 104). The Federal Corrupt Practices Act was repealed and replaced with the Federal Election Campaign Act (FECA) of 1971, which aimed at publishing official disclosure reports of contributions towards political candidates, and election and party committees, and in 1972 these disclosures became official records for the first time (Mutch, 1988, 27; Johnston, 2005, 65;

[1] It is important to note that the Federal Corrupt Practices Act carried the force of law but was not widely enforced due to the lack of an administrative or compliance apparatus to enforce regulation (History Commons). In the history of the Federal Corrupt Practices Act, the data of which consisted of monetary contributions were only compiled and published when an investigative congressional committee or privately funded research organization.

Teachout, 2014, 206-207). Shortly thereafter, in 1974, the Federal Election Commission (FEC) was created in addition to setting limits of campaign donations and spending. The FEC was formed to administer and enforce campaign finance laws regarding disclosure of contributions, legal limits of contributions, and expenditure limits that the Congress could not independently enforce in the previous law, the Federal Corrupt Practices Act.

In 1976, the U.S. Supreme Court heard *Buckley v. Valeo*, which has become the cornerstone to future rulings as they related to campaign spending addressed some concern for corruption, but chiefly concentrated on the configuration of the FEC and its enforcement procedures. The fundamental features of *Buckley v. Valeo* were: (1) Regulations on campaign finance implicate the protections of free speech and association granted by the First Amendment, (2) Regulations may be required in order to prevent corruption, but not to balance spending of competing candidates in order to influence voters, or to limit fundraising that would otherwise be used for campaigning, (3) Treatment of contributions and expenditures are to be handled differently; expenditures are to receive the utmost level of protection by the constitution, while contributions are less protected due to the presence of possible corruption and are more readily restricted as a result, (4) Laws on disclosure and reporting of campaign donations are typically constitutional because of transparency on the source of funds, (5) Spending limits and disclosure obligations are only applicable to activities that specifically promote the victory or defeat of political candidates on a federal level, but not to overall political speech, (6) Open fundraising for candidates is constitutional as it furthers the values of the First Amendment by enabling political discussion among the public and decreasing the guidance of large monetary offerings by private donors; as a condition for receiving public funds, spending limits can be required (Briffault, 2000, 30-31; Nichols & McChesney, 2013, 28; Teachout, 2014, 208, Cockcroft &

Wegener, 2017, 20). Overall, the features of *Buckley v. Valeo* held that disclosures were necessary, but campaign expenditure limits were an unconstitutional violation of the First Amendment as *express advocacy* qualified as speech, per the court's opinion. It is important to highlight that in stipulations 2 and 3 of *Buckley* were ruled on in order to control and suppress corruption within campaign finance.

In 1978 the FEC broadly administered the applicable uses of hard money and soft money. While hard and soft money are not defined in campaign finance law, the FEC proceeded with overseeing the acceptable use of soft money as money that was previously prohibited under FECA from either unacceptable sources, or because it exceeded limits of contribution (Simon, 1997, 175; Whitaker, 2002, 31). The FEC concluded that hard money could be donated and spent as long as it was in compliance with regulatory laws and individual contribution limitations which meant that candidates had to raise small amounts from many individuals (Barnett & Blackman, 2019, 275). Soft money could be spent willfully and unregulated because this money was supposed to only be used for party building, and eventually for advertisements that were related to candidacies which increasingly garnered more donations as well as spending in elections (Whitaker, 2002, 31). The loophole of soft money would be exploited by many of those who reached federal individual limits (Gerken, 2015, 6). Concerns for corruption intensified once again as unions, corporations, and other large political donors established Political Action Committees (PACs) in order to circumvent regulations of individual spending limits. Additional legislative action in Congress was vital in order to close apparent loopholes in the FECA, which was a heavily debated partisan topic between those in favor and those who opposed the government regulation of campaign finances.

Contemporary Campaign Finance Laws

Critics of campaign finance laws claimed that money will perpetually find its way into politics, regardless of laws and regulations, while proponents argued that while it is difficult to curb money in politics, it was necessary and that the laws should every so often be modified in order to correct any unanticipated concerns (Cantor, 2002, 8). In 2002, Senators John McCain (R-AZ) and Russ Feingold (D-WI) cosponsored a bill to reduce the role of soft money in campaign finance laws which is now known as the Bipartisan Campaign Reform Act (BCRA). The very next year, a strong challenger of the BCRA, Senator Mitch McConnell (R-KY) took his case to the U.S. Supreme Court in *McConnell v. FEC* in 2003, in order to challenge the constitutionality of BCRA, where the court upheld BCRA nearly in its entirety. First, Congress was allowed to continue to limit contributions of soft money to political parties; and second, the spending limits set on advertisements was also upheld (Barnett & Blackman, 2019, 275). The reasoning behind the ruling and its interpretation of the constitutionality of the case was that it prevented apparent corruption that soft money contributed to, and it preserved the integrity of the elections process. Furthermore, the contribution limits in Title I of BCRA, which were upheld in *Buckley v. Valeo*, in what Justice Stevens said regarding soft money, "restrictions have a marginal impact on the ability of contributors, candidates, officeholders, and parties to engage in effective political speech" (Library of Congress, 2003, 138). Stevens continued in his opinion that Congressional regulations would above all limit the ability of wealthy donors to monetarily contribute vast sums in order to sway federal elections, which confirmed the court's conviction that large monetary donations carry influence in corruption, or the increase of corruption, where such contributors would expect favors in return in exchange for their large donations. The constitutionality of Title II of BCRA was upheld, which proscribed corporations or labor unions

from spending funds on *electioneering communications* which would name candidates, particularly within 60 days of a general election or 30 days of a primary election, targeting his/her election (Library of Congress, 2003, 102). The majority of the Supreme Court decision held that the restrictions of Title II were in accordance with the constitution as a way to diminish corruption (Barnett & Blackmon, 2019, 276). Three years later, the retirement of Justice Sandra Day O'Connor prompted President George W. Bush to nominate Justice Samuel Alito, a conservative judge, in order to fill the vacancy of O'Connor's seat on the U.S. Supreme Court. Alito's influence in the court would eventually threaten the ruling of *McConnell v. FEC* in 2010 with *Citizens United v. FEC*.

In 2008, Citizens United, a nonprofit corporation, sought to release a film entitled *Hillary: The Movie*. The movie was about Hillary Clinton, who was a presidential candidate for the 2008 election. Scheduled for release in 2008, prior to the election, it was determined that the commentary about Hillary Clinton would have been illegal according to BCRA since it made monetary expenditures from a corporation in order to support or denounce a candidate for federal office. Since the movie consisted of speech that was critical against Hillary Clinton's candidacy, it violated Title II of the BCRA's electioneering communication clause (Barnett & Blackman, 2019, 276). Because the Citizens United challenge in citing the First Amendment lost at the lower court, the case was appealed by the corporation, and was heard by the Supreme Court in *Citizens United v. FEC* in 2010. The panel of Chief Justice Roberts along with Justices Kennedy, Alito, Scalia, and Thomas held the 5-4 majority in overturning the precedent set in *McConnell v. FEC* thus determining Citizens United, a corporation, as protected by the First Amendment. The court's opinion overruled *McConnell v. FEC*, which held limitations on electioneering communications funded by corporations and unions as unconstitutional, and

thereby reversed the precedent set in the previous ruling of *McConnell v. FEC, 2003* (Barnett & Blackman, 2019, 277). Independent expenditures are money spent by individuals, corporations, interest groups, unions, or political committees could spend for communications for websites, newspaper, radio, or television ads, direct mailers that advocates the election of or the defeat of a candidate, but not made in coordination with the candidate or the candidate's campaign (FEC, 2020). The Supreme Court ruled that the Congress could not determine preventative measures to bar corporations and unions from dominating elections because of protections within the First Amendment (Clements, 2014, 8). Since the Supreme Court's decision, if corporations, unions, special interest groups, or wealthy individuals feel the need to donate to multiple candidates or Political Action Committees (PACs) without any restrictions, they can.

Shortly after the decision of the *Citizens United* case, the 2012 election saw record heights in money spent in any election in history (Clements, 2014; Hansen, et al., 2015; Mayer, 2016). In the presidential election, as much as $10 billion was spent, in addition to many billions more in state and local elections, and a lot of that money was *dark money* (Clements, 2014, 9; Nichols & McChesney, 2014, 37). In her book, Mayer (2016) conceptualizes dark money as a way for donors to contribute monetarily to elections anonymously, for example to social welfare groups. Previous to the *Citizens* case, corporations had given very little money to social welfare groups, or 501(c)(4) groups because prior to the Supreme Court's 5-4 decision, these groups, like corporations and unions were limited from spending for or against candidates in elections (Mayer, 2016, 247). As a result of the *Citizens* decision, donations to 501(c)(4), or social welfare groups were not only beneficial because they were tax deductible, but it became a way for wealthy individuals and corporations alike to hide their political spending (Mayer, 2016, 247). In the 2012 election, independent expenditures increased by 594% from the 2008 election;

in 2008, only $144 million came from independent expenditures, and in 2012, independent expenditures increased to $1 billion (Hansen, et al., 2015, 535). The FEC reports that $1.6 billion came from independent expenditures in the 2016 Presidential Election (FEC, 2017).[2]

New Scholarship on Corruption

The above history of campaign finance points to a historical concern related to the interjection of corruption in the realm of campaign finance. One common concern in the laws discussed in the previous sections, is the idea of the potential for corruption in the form of *quid pro quo*. Quid pro quo is the potential for candidates to coax wealthy donors for contributions to their campaigns, and then make arrangements in secrecy in order to steer policy at the benefit of those wealthy backers (Burke, 1997, 131; Issacharoff, 2010, 121-122; Briffault, 2011, 644). The problem with quid pro quo is that it focuses on the individual; thus, this type of patronage is difficult to prove (Großer, et al, 2013, 584). Because campaign donations are legal per se, it is hard to prove an incident of quid pro quo because we cannot monitor private meetings between donors and politicians. Any system, however, where campaigns receive private unregulated donations opens up the potential of money influencing elected officials (Issacharoff, 2010, 126).

Since the decision of *Citizens United v. FEC*, scholarship has begun to focus on corruption at the institutional level (Hellman, 2013; Teachout, 2014; Whyte, 2015). Institutional corruption looks at political behavior that is legal but carry negative consequences for the public interest (Amit, et al., 2021, 1121). Corruption of influence is when people or interested groups seek and receive illicit gains for the benefit of themselves or for their organization (Cockcroft & Wegener, 2017, 14). This produces a problem of inequity between the extremely wealthy and even the

[2]For more information on Independent Expenditures in the 2016 Presidential election, please see §V. Independent Expenditures in "Statistical Summary of 24-Month Campaign Activity of the 2015-2016 Election Cycle".

moderately wealthy – and everyone below this threshold (Smith, 1997, 54; Cockcroft & Wegener, 2017, 14). One example of this would be the top one percent of the top one percent wealthiest Americans when they donated 30% of all political contributions to the 2014 midterm federal elections (Cockcroft & Wegener, 2017, 15). This, "corruption by influence" can also be understood as an abuse of public trust by utilizing the power of the government for private gain. It signals that the institutions that are designed to protect the public interest have become susceptible to private interests and thus, simultaneously susceptible to corruption (Johnston, 2005, 12; Whyte, 2015, 6). Corrupt behavior occurs when the behavior disrupts customary standards of the suitable operation of the institution (Hellman, 2013, 1393; Whyte, 2015, 6). Institutional corruption undermines both the government and regulatory agencies ability to guarantee the protection of citizens from corruption (Miller, 2015, 60). Furthermore, the structures of impunity in the politics of regulation give those in power opportunities for corruption (Teachout, 2014, 2; Whyte, 2015, 21). Impunity provides those who violate the law with exemptions from punishment. In this structure of impunity, those who are entangled within the institution benefit from either writing the law as legislators do or decide what the law is as judges who preside on cases regarding campaign finance laws do. The abuse of public trust creates the need for structures that secure impunity for the rich, which is why they stay in power. Primarily due to the structure of impunity, the way power is concentrated among the wealthy, which keeps this class at the top of the power structures along with the politicians who receive their donations in order to get elected (Whyte, 2015, 28; Cockcroft & Wegener, 2017, 16). Understanding that corruption in campaign finance can operate through the issues of public interest, structures of impunity, and the strengthening of class power among the wealthy make clear that an individual analysis of corruption in campaign finance would miss the much larger

ways in which institutions permit this form of corruption. Campaign finance laws which focus on individual behavior ultimately preserve corruption in the system by rarely punishing individuals. Perhaps the most damaging aspect of the individual analysis of corruption in campaign finance laws is that it preserves corruption by not interrogating the ways in which our institutions protect corruption itself.

III. Methodology

Corruption is understood as "the abuse of entrusted power for private gain," as it destroys trust, democracy declines, and it intensifies issues of inequality and social division. (Transparency International, 2019). However, scholars have expanded the understanding of corruption to include the capturing of regulatory agencies and elected officials by corporations and their consultants, the conduit between government and big business, the privileged relationships with public officials benefitted by the wealthy class, and the corporate funding of political parties or campaigns in exchange for favors (Beetham, 2015, 41). Institutional corruption is defined as the behavior in the public realm that is legal but has negative consequences for the public interest because the behavior benefits private interests at the expense of the public (Johnston, 2005, 12; Teachout, 2014, 2; Whyte, 2015, 6; Beetham, 2015, 41; Amit, et al., 2021, 1121). Whyte (2015) adds that "corruption is not merely an effect of power, but is a means by which institutions maintain and concentrate power" (27). Focusing on the individual misses the point because, "in each case, competitive advantages and strategies of institutional domination are enhanced by corrupt practices" (Whyte, 2015, 27). Corruption can also be understood as a methodical power-mongering scheme that boosts the power of institutions (Whyte, 2015, 27). This perspective becomes apparent when I examine the form of corruption that takes place in the U.S. campaign finance system.

In this paper, *institutions* (or *institutional level*), should be understood as structures of government – the Presidency, the Congress, the Courts, regulatory agencies, and the political parties. In order to analyze the ways in which campaign finance and corruption at the institutional level operate, I will rely on Whyte's (2015) conceptualization of institutional corruption, which focuses on three principal issues through which corruption functions: public

interest, impunity, and class power. I will apply this conceptualization to the analysis of the ways in which corruption functions within campaign finance in the United States.

This paper understands public interest as a political virtue with regards to transparency and accountability. If private interests trump public interests while public power is being exercised, this refers to an excess of private interests in the public sphere, and we can regard the behavior as corrupt (Hellman, 2013, 1398; Teachout, 2014, 9). When the basic principles of accountability and transparency are undermined, so too are the public's interest in these ideals (Whyte, 2015, 21). Next, impunity, simply put, is an exemption from punishment. The most powerful institutions of the United States government support laws that give impunity to a class of the wealthiest individuals or corporations by allowing for this class to circumvent ordinary, individual limits of campaign donations, they are, in essence, above the law. This protection ultimately creates a concentration of power among the wealthiest individuals, corporations, and special interest groups. This allows the power class to freely contribute to campaigns without any regard for individual limits. Therefore, their interests, by being the most represented and funded, dominate elections. This process paves the way for this class, the wealthy, to galvanize its class power.

IV. Discussion

The façade of democracy, particularly in developed countries like the United States makes us believe that Western, wealthy nations are immune to the corruption that exists everywhere else (Whyte, 2015, 1). The notion that fair and democratic institutions are the pinnacle of American ideals, make democracy seem successful. However, in modern U.S. elections, we see the ideals of fairness and transparency diminish with the amount of money injected into each election. When we analyze corruption at the institutional level, we see the myth of democracy at work. Campaign finance laws have essentially legalized corruption in campaign finance by allowing rampant spending on elections by the wealthiest individuals with hopes of gaining political favors for their private interests. However, utilizing the lens of institutional corruption allows us to unpack the ways that campaign finance preserves corruption in this system.

The Issue of Public Interests

The idea that governments should serve the interests of the public is a foundational tenet of democracy. However, American ideals like liberty, speech, and equality aimed for the public interest are disrupted when corruption gives those in power an opportunity to fulfill private interests in the public sphere (Teachout, 2014, 9). The decision of the Supreme Court in the *Citizens United* case shows a flagrant disregard of the understanding of the institutional concern for corruption. Rather than preside on the case in the interest of the public, which would be to focus on the individual's, or ordinary citizens' rights to speech and to donate to campaigns, the Supreme Court ruled in favor of class power, which flooded elections with corporate and special interest money led by the top one percent. This institution essentially awarded future elections to the highest bidders at the expense of the public interest in one person, one vote. It is important to

distinguish boundaries between public and private interests, particularly when it concerns elections. The prevailing form of corruption at an institutional level in the case of elections is the consistency of anarchic struggle among competing elites seeking to parlay private resources into personal wealth and power within the public sphere – particularly in the government (Johnson, 2005, 44). The debate about whether or not to allow limits on monetary donations to campaigns, whether money is akin to speech, or what corruption might be is ultimately controlled by the institutions, primarily the courts. However, in terms of campaign finance, the courts have sided with elites, and the Presidency, Congress, and political parties work together with their wealthy donors, the power class – whether top one percent individuals, PACs, Super PACs, corporations, unions, or special interests – to protect their interests via their financing of campaigns; a right which is not made available to the general public. In this way institutions protect and preserve private interests, and elites who decide among themselves at the expense of the public, which effects democracy as an institution in and of itself.

The laws that have been established as a result of cases such as *Citizens United*, have become very useful to elites. Elected officials rely on the ability of wealthy donors to inundate campaigns with an abundance of money for spending sprees to influence the outcome of the election. Rather than root out corruption, which has been the case since the dawn of campaign finance laws, Congress and the courts relent to making policies that allow for copious amounts of money because the system works in terms of a strategy that help influence elections in their favor. And since electioneering laws as they relate to Super PACs do not require fact-checks, campaigns are legally allowed to lie or mislead the electorate in order to influence the election in their campaigns favor (Jackson, 2019; Montini, 2020). When people recognize salient issues within the campaign ads, they tend listen closely in order to develop their own opinion or

confirm their bias towards the issues (Freeder, et al. 2018). The ordinary citizenry, average people who hear or see these commercials likely accept what is said in the campaign advertisement as fact, regardless of whether or not it is true (Jackson, 2019; Montini, 2020). At the risk of the public's interest, the federal government accepts this as a reality, and sees this electioneering behavior as perfectly legal (Jackson 2019; Montini, 2020). Legal actions that carry negative consequences for the public interest is the working definition of institutional corruption. If electioneering regardless of facts is legal speech, the Federal Election Commission, the regulatory institution of campaign finance laws is underdeveloped as the FEC cannot regulate fact and fiction. The undermining of the FEC as an institution equates to an erosion of democracy in order to preserve a system, where the public interest and benefit is at best questionable. Wealthy individuals, corporations, PACs, special interest groups, and Super PACs have enormous capital to spend on elections, this allows them to influence elections in a way that ordinary citizens cannot. The framers intended for ordinary citizens to have an equal say of their government, which is a fundamental principle of democracy. When political actors engage the system, it becomes difficult to compete without the system that is in place. There simply is not enough individuals in the power class to compete with the ordinary citizenry. The political actors must rely on big money in order to influence to public and still refer to this as the interest of the public – even the politicians who are ideologically against it.

Structures of Impunity

Because corruption as interpreted by the Court requires the intent of corrupt behavior in order to convict an individual, the elites, or those within the institutional structure, are essentially insulated by the laws that are supposed to protect the integrity of American democracy (Whyte, 2015, 20). Generally, impunity is understood as an exemption from punishment, particularly

when a crime has been committed. In terms of campaign finance impunity functions to conceal the identities of individuals contributing far beyond the legal individual limits. Further, in concealing the identities of wealthy donors, the interests that drive the funding of elections are also obscured. If special interest groups, PACs, and Super PACs, including corporations, unions, or wealthy donors were thoroughly vetted by the government and its regulatory agencies for their involvement in unethical practices surrounding campaign finance and transparency in the name of the public's interest, the monetary contributors would be considerably less (Whyte, 2015, 21). One way the government allows impunity for political actors and the elites is to avoid mandating a thorough vetting process, which would likely cost too much money or create a bureaucratic nightmare laden with red tape in order for the parties and their candidates to obtain financial contributions (Whyte, 2015, 21). But because there is no vetting process, the inclusion of big money that evade regulatory laws through loopholes clearly undermines the basic idea that private corporations and their executives who donate money to campaigns, and the politicians who accept and spend their money should be held accountable (Whyte, 2015, 21).

Elected officials often ignore formal rules surrounding campaign finances with impunity. As we saw with Duncan Hunter, ordinary civilians would face charges of up to ten years if they embezzled money (Steiner, 2012). To compound this issue, although Duncan Hunter was sentenced to only 11 months, and he was able to evade serving one day in jail because the leader of his political party, President Donald Trump commuted his sentence. This is the type of insulation government institutions demand for one of its members. The level of impunity that exempts political actors from serving a prison sentence is an overt illustration of institutional corruption because ordinary citizens who are charged with embezzlement crimes similar to this would likely serve out their entire sentence. Thus, the culture of impunity for institutional

corruption is on full display. Trump's presidential pardon sends a clear message to all the elites that government institutions will protect them, a privilege not extended to the rest of society. This sort of example reminds us that the public interest is betrayed as the institution, in this case, party elites tolerate corruption by their membership because they view public and private interests as entwined (Whyte, 2015, 20). It shows the public that the highest level of government – the courts, Congress, and even the presidency, will tolerate such crimes within the institution. The problem with the structures of impunity is that only those of a distinct class, the power class, can benefit from it – the general citizenry cannot.

Institution of Class Power and Corruption of Influence

Institutional corruption is one of the main drivers of inequality (Strauss, 1994). The top one percent is represented by the wealthiest individuals in America who happen to be the biggest contributors in recent elections. These individuals, as the largest donors separate themselves from others whose contributions to campaigns are minimal in comparison. The loopholes that exist for wealthy donors, through which they influence the outcomes of elections fortify the position of the top one percent and creates what the scholarship on corruption refers to as, "class power" and "corruption of influence" (Whyte, 2015, 28; Cockcroft & Wegener, 2017, 14). When we compare the structure of impunity that protect those of institutional transgressions with ordinary citizens convicted of financial crimes, we can begin to understand how corruption functions as a form of class power (Whyte, 2015, 28). The more the wealthy class can influence elections, the more their interests are represented and protected and the less the average person is represented and protected. Corruption of influence is the role that big money can play in subduing the interests of the public interest whose views can be trivialized by both parties

(Cockcroft & Wegener, 2017, 16). Policy can be bought, and elections can be paid for by the highest contributors, which is an auction that only the wealthy can participate in.

Citizens United v. FEC enabled elites to pour money into elections to influence the outcomes, which sacrificed policy designed for the public's interest. Yet, a large portion of money contributed to elections is from dark money. Donations from those who want to influence politics while concealing their identities are coming from a minuscule fraction of the wealthiest people in America (Mayer, 2017, 227). Unlimited contributions from Super PACs enjoy a new kind of power in the form of legal speech, which is a detriment to the public good. Thus, this class, made up of the top one percent also benefits from the structures of impunity. A negative consequence of *Citizens United* is that the American political system is awash in unlimited, untraceable cash provided by this class, which links all three basic principles of institutional corruption together.

V. Conclusion

This paper has identified the intersection between campaign finance and institutional corruption. The historical record on campaign finance laws showed us that corruption has always been a concern regarding how elections are funded. But the system of regulation of campaign finance only focuses on the individual concern of corruption. One part of the issue is that corruption is difficult to regulate, and individual corruption is hard to prove. The institutional corruption that this paper discussed demonstrates the need for additional examinations of corruption to be rooted out from the foundations of the campaign finance system as they relate to all of the governmental institutions. Another part of the problem is that ordinary citizens are not elected officials. Ordinary people are also not the wealthy elite that are buying the outcomes of elections. The public interest is what represents the ordinary people. My contribution to the field of campaign finance study has expanded on the problem with institutional corruption benefiting the institutions, particularly individuals of Congress, at the expense of the public interest, with impunity. In addition, with the presidency, the Congress, and the Courts all seemingly working together like cogs in a political machine, the elites that also work within these institutions are a part of the power class, by working within the corruption of influence.

Future research can expand on practical ways to curb this type of corruption. For example, to address campaign finance issues, what are the possibilities of lobbying Congress for a series of Constitutional Amendments that address the specific problems the system devises – Amendments that address people's rights, citizens equality, and separates money from being akin to speech (Clements, 2014, 195-197). Amendments to the Constitution should specify the words *people, person*, or *citizen* to be separate from interest groups, PACs, Super PACs, unions,

corporations, and any other entity that claims to have the same rights as individual people. An amendment focused on the equality of citizens also helps to root out the structural corruption of institutions, particularly the problem of class corruption. Future research should also consider whether or not an independent non-partisan regulatory agency can enforce rules against institutional corruption, and what challenges this regulatory agency would face in order to carry this out.

As we have seen in the presidential elections of 2016 and 2020 it is possible that the public interest can compete with big money in politics in order to weed out institutional corruption – it just was not enough. Bernie Sanders was able to create a grassroots movement where small donations by many individuals was able to elevate Sanders' ability to compete for delegates until nearly the end of both Democratic primaries for both elections. This proves that the public is interested in electing leaders that want no part of institutional corruption. It shows that public interest can be motivated to curb big money in elections with strength in numbers. The problem herein, is the elite power class at the top of the institutions that have more money to spend.

In conclusion, if we compare the Duncan Hunter case in illegal use of campaign funds for personal benefit, to an ordinary citizen who illegally embezzled money of their enterprise for personal use, who will face a harsher sentence? Of course, the ordinary citizens serve out their sentences in full, as mentioned up to ten years – and we already know that Hunter was only dealt a soft sentence of 11 months. Here, corruption is entrenched in the presidency and the political party. But since campaign finance laws only focus on the individual, this example is normative and was not included in the main discussion of this paper. One politician is convicted of a similar crime akin to embezzlement and does not serve a single day in prison and represents a

system that guarantees appalling levels of inequality. Federal officials – members of Congress like Hunter used to be, are a part of the class of power. Because his father had a long illustrious career in Congress, class power becomes a birthright for Duncan Hunter, who suffered no legal consequences for his part in illegal use of campaign funds. The presidency, who is supposed to enforce the laws, gave him impunity because the leader of the political party that Hunter is a part of, recognizes Hunter's familial ties to the party that might get Donald Trump another chance for election in 2024. Perhaps future discussion of the structures of impunity can include individual greed as part of this system of institutional corruption.

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