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THE CRISIS IN UNITED STATES CAMPAIGN FINANCE REFORM

Mordu Serry-kamal
Associate Professor, Winston-Salem State University, North Carolina, USA

ABSTRACT

Despite the myriad efforts made by the Congress of the United States and state legislatures to regulate the influence of money in American politics, the results have been manifestly disappointing. This assertion is premised on the fact that money in politics has not only increased in volume; but also, the complexity of its amassment has increased enormously in scope. Given these developments, therefore, it will be safe to state vehemently that attempts at curbing the influence of money in American electoral politics, through campaign finance reform laws, appear to have been quite unsuccessful.

Introduction

The logic underlying the history of campaign finance reform in the United States has been somewhat of an attempt to ensure that financial contributors or donors to the campaigns of political candidates would neither be allowed to sway elections nor acquire undue political influence in government decision-making when such candidates have been elected or reelected to office. This effort was undertaken for the purpose of discouraging corruption in American politics by preventing the fermentation of relationships that might be based on political *quid pro quos*. Corruption is regarded as a form of malfeasance; and, malfeasance is defined as "…the performance by public officials of deeds that they are forbidden to perform by constitutional or statutory law, or by commonly accepted moral standards".[1] This includes the abuse of authority, such as bribery, for personal gain.

Because campaign finance has increasingly been recognized as having the potential to establish such *quid pro quo* relationships among actors within the political arena, thereby generating an atmosphere of conflicts of interests, a growing number of reformers have reasoned that such activities must be subject to rigid governmental regulation. In his book entitled *The Fallacy of Campaign Finance Reform*, John Samples expresses the gist of this political sentiment: "Those who demand restrictions on money in politics – the 'reform community' – have dominated (and dominate) most public debates about campaign finance. They contend that money corrupts American democracy by perverting representation, undermining democratic political culture, lowering political discourse, fostering inequality, and reducing electoral competition. Democracy must be protected, they say, from the corruption brought by money and its owners".[2]

Additional sentiments concerning the same issue have also been expressed even from Congressional quarters, perhaps in response to the popular clamor for reform. According to John Samples, certain Senators in the United States Senate are purported to have articulated their reasons for supporting the concept of campaign finance reform. These reasons are stated as: curbing the influence of special interests; ending the appearance of corruption; reducing some types of political advertisements; promoting democracy; increasing political equality; regaining control of campaign finance; acting in the public interest; restoring trust in government; increasing electoral competition; improving the political discourse; and finally, reducing spending in elections.[3] In sum, these expressed objectives, which appear to constitute the overall goal of campaign finance reform, are a manifestation of the general recognition that the democratic political system must be protected from influences generated by the mass proliferation of money in the American electoral process.

Since the focus of this study is on campaign finance reform, reference to public or government sector corruption is largely limited to elected officials in the legislative, executive, and judicial branches of government. This is significant because, collectively, these branches of government make public policies. Although generally regarded as non-political and non-partisan, judicial branch officials are nevertheless included for scrutiny for three reasons: one, elected officials nominate judges and justices (as the case may be) for office, via a political process, at both state and federal levels; two, decisions made by the courts have a legal impact on laws enacted by the legislative and executive branches of government; and three, some offices of the state judiciary in the fifty states are elected in partisan and non-partisan elections. In addition, from the perspective of federalism, laws enacted by the United States Congress through powers granted under Article I, Section 8 of the Constitution, preempt state laws through Article VI of the same Constitution. As a result, certain election laws enacted by states are carried out in conformity with such federal preemption. Altogether, therefore, this constitutes the political government infrastructure whose policies would have a direct bearing on campaign finance reform.

On the basis of the premises delineated above, this writer posits that the idea of campaign finance reform is in crisis for four major reasons: one, the various laws which have been enacted in the past decades have not achieved their intended purpose of limiting the supply of money in electoral politics; two, because elections are increasingly becoming more costly in the United States, there is a commensurate dire need for more money by candidates running for elective office; three, since legislators themselves are a part of a confluence of beneficiaries of campaign finance deregulation, there appears to be a lack of motivation on their part to actually craft effective pieces of legislation that would be enforceable in that realm; and four, there appears to be no current concerted effort in the United States Congress that is oriented towards the promulgation of effective campaign finance laws, especially following the United States Supreme Court's decision in *Citizens United v. Federal Elections Commission* (2010). Therefore, in an effort to demonstrate this failure, a limited sample of the explosion of money in elections will be addressed below briefly, from historical and contemporary perspectives.

Sandy L. Maisel and Mark D. Brewer provide an impressive summary of money in politics between 1952 and 2010: "…. it is clear that the amount of money spent on campaigns in the United States has grown exponentially over the past sixty years. In 1952, political scientist Herbert Alexander calculated that approximately $140 million was spent on political campaigns nationwide. In 2008 – like 1952, a presidential election year - $5.3 billion was spent on campaigns for federal office alone according to the Center for Responsive Politics, with an additional unknown amount spent on state and local races across the nation. The recently completed 2010 [mid-term] elections have also shattered records, with preliminary figures compiled by the Center for Responsive Politics indicating that total spending on federal races in 2010 came up to just short of $4 billion, an increase of more than $1 billion from 2006. The amounts spent on some individual races are enough to move even the most laissez-faire observer to raise an eyebrow – for example, $69.1 million spent on the 2000 Corzine-Franks senate race in New Jersey or the $16.8 million spent on the Bachmann-Clark congressional race in Minnesota (both records). In the 2010 California gubernatorial election, billionaire and former eBay CEO Meg Whitman spent over $170 million (final figures are not yet available), a little over $140 million of which was her own money. Whitman spent $2.6 million on [Election Day] alone, when everyone in their right mind knew she was going to lose. Many are speculating that President Obama will become the first presidential candidate to raise over $1 billion in his 2012 bid for reelection".[4] In addition, the mass media have also speculated that the total sum of expenditures in the current 2012 presidential race alone may supersede $3 billion, by virtue of the emergence of *Super PACs*.

The final campaign spending figures for the 2010 California gubernatorial election show that Meg Whitman actually spent a total sum of $178.5 million; whereas, Jerry Brown who won the election, spent a total of $36.5 million.[5] The Center for Responsive Politics also revealed that the five highest-spending senate races in the 2010 elections took place in: Connecticut ($20.4 million); California ($18 million); Nevada ($17 million); Arizona ($16.8 million); and Arkansas ($11.8 million).[6] At the local level, Mayor Michael Bloomberg is said to have spent over $75 million in each of his two successful elections in 2001 and 2005, respectively.[7] For his reelection into a third term, he is purported to have spent a total of $102 million of his own fortune; and according to Michael Barbaro, this amount of money would equate to approximately $174 per vote, making this campaign the most expensive in the electoral history of New York City.[8]

Given these prevailing and on-going set of circumstances, this author proposes to delve into analyses underlying the reasons for the failure of campaign finance reform in the United States. The analyses will address these salient factors: one, an unclear operational definition for *political corruption*; two, the contribution of loopholes to the ineffectiveness of campaign finance laws; and three, the federal courts' interpretation of the First Amendment to the national Constitution, and the candidates' exploitation of loopholes generated by such an interpretation. Collectively, therefore, these factors shall constitute the crisis factors in United States campaign finance reform.

An Unclear Operational Definition for *Political Corruption*

As a concept, *political corruption* appears to be elusive in the public sector of the United States because there is actually no clearly posited operational definition for what specifically constitutes an act or acts of corruption.[9] An unclear operational definition would imply, therefore, that there might be different interpretations for various acts of perceived corruption. For example, there might be difficulties attempting to distinguish *acts of corruption* from *unethical acts* or *fraudulent acts*.

Given this conceptual difficulty, the writer shall address the question of an unclear operational definition for political corruption by: one, briefly stating two theories which attempt to posit definitions and explanations regarding what constitutes corruption; and two, advancing case studies involving *acts of corruption* in the United States public sector. This effort is being undertaken for the purpose of demonstrating that there is a direct correlation between the supply of and demand for money in electoral politics on one hand; and, actions of political corruption on the other.

Theoretical Definitions and Explanations for Corruption

First, according to Arvind K. Jain, a major obstacle to studying corruption is the difficulty of defining it.[10] Jain proceeds to provide a conceptual definition for corruption; in addition to establishing a link between corruption and *illegal acts*: “Although it is difficult to agree on a precise definition, there is consensus that corruption refers to acts in which the power of public office is used for personal gain in a manner that contravenes the rules of the game. Certain illegal acts such as fraud, money laundering, drug trades, and black market operations, do not constitute corruption in and of themselves because they do not involve the use of public power. However, people who undertake these activities must often involve public officials and politicians if these operations are to survive and hence these activities seldom thrive without widespread corruption”[11].

Second, Gjalt de Graaf and L. W. J. C. Huberts explain corruption in this manner: “Public officials are corrupt when they act (or fail to act) as a result of receiving personal rewards from interested outside parties”.[12] In their explanation of what constitutes corruption; these authors posit the idea of personal rewards as motivation for public officials to act or not to act on particular demands made on them. The case studies that follow below are practical manifestations of the analyses contained in the totality of these theoretical conceptualizations.

Corruption Case Studies in United States Public Sector

Charles Lewis of the Center for Global Integrity provides a litany of statements on political corruption cases which describe the behavior of the actors, along with a description of the structures and processes of the political environment, within which these acts of corruption were purported to have transpired.[13]

- "The president's father earns sizable fees from a company getting millions of dollars in government defense contracts. The president's brother will get US $2 million as a business consultant to a Chinese semiconductor manufacturer even though, by his own admission, he knows nothing about semiconductors".

- "Private gain from public life at the national level is legal and not uncommon in the United States and those in or around government officialdom in Washington would be shocked if anyone had the temerity [audacity] to refer to it as 'corruption'. It's rather just 'business' and 'how things work'".

- "…….. every one of the 10 largest contracts awarded for work in Iraq and Afghanistan went to companies employing former high-ranking government officials, and *all* 10 top contractors are established donors in American politics, contributing nearly US$11 million to national political parties, candidates, and political action committees in 1990, according to an analysis of campaign finance records. On the eve of the Iraq war, at least nine of the 30 members of the Defense Policy Board, the government-appointed group that advises the Pentagon, had ties to companies that had won more than $76 billion in defense contracts in 2001 and 2002".

- "All these convenient confluences are legal, and except for some alleged price gouging by Halliburton, nothing untoward has been noticed by government auditors. What good are laws if politically partisan or timid people are unwilling to enforce them?"

- “True, what we see here is not corruption in the legal sense, but it is an insidious form of gaming the system – disguised as business as usual – a form of ‘legal corruption’ if you will, that is as old as the republic itself”.

- “In 1968, there were fewer than 100 registered lobbyists on Capitol Hill; today there are nearly 25,000, overwhelming Washington like locusts. Their ranks include dozens of congressional spouses, along with sitting members’ children or in-laws, who work as lobbyists for powerful special interests”.

- “The current incumbent class of Congress is so entrenched that, fully stocked with cash and careful redistricting to make a successful challenge almost humanly impossible, only four (of 435) House members lost their seats to non-incumbent challengers in 2002, the fewest in U.S. history”.

- “It is a common sophistry in post-Watergate, 21st century Washington to suggest that political payments to parties and politicians buy access, but not influence. Fortunately, an overwhelming majority of Americans, not to mention the Supreme Court of the United States, recognize the absurdity of such an assertion. Pick any powerful special interest in Washington, or in the 50 state capitals, and chances are its garden is lush and well-tended. The same goes for our state legislatures, where 42,000 lobbyists spent more than US$715 million in 2002 attempting to influence lawmakers in those 39 [out of 50] states with lobbying disclosure laws”.

- Regarding the mad cow hysteria of the 1990’s, concerning contaminated beef, “…… no legislation to tighten up the meat-inspection process ever made it to the floor of either house of Congress, despite the fact that thousands of Americans die annually and millions more get sick from infected food. Why no action? Perhaps it was related to the $41 million fed by the food industry to lawmakers and their parties during that time”.

- There is no shortage of evidence that, despite the annual applause for all of the anti-corruption mechanisms in place in these United States, so-called legal corruption abounds. What is perhaps more interesting is the lack of candor in public discourse today – indeed, the palpable denial, the false conceit – about the state of corruption in America".

The statements above are a reflection of the manifestation of a number of significant factors regarding entrenched quid pro quo relations among political actors. These factors are: one, *influence-peddling* or the use of campaign finance contributions by special interests to obtain access to decision-makers for the purpose of influencing policymaking; two, *nepotism* or the seeking of career opportunities by relatives, acquaintances, and friends of politicians and special interests; and three, *opportunism* or the seeking of careerism or incumbency by the decision-makers themselves. Therefore, according to the theoretical definitions and explanations by Jain and others, these activities would fall within the realm of acts of corruption, even though they may not necessarily be regarded as such in public sector circles as Charles Lewis has implied.

Moreover, given that there is no clear operational definition for corruption, thereby making it somewhat impossible to strike at the core of the problem, the continuation of such activities is bound to render even piecemeal attempts at regulating the influence of money in politics ineffective, and as a result meaningless. It would therefore appear that, because there are political and economic benefits to be accrued from such relationships, the beneficiaries might be reluctant to abandon the practice. As a consequence, this would further complicate any future attempts at addressing the issue in an effective manner.

Legislation: Loopholes and the Ineffectiveness of Campaign Finance Laws

In this section, the writer shall attempt to embark on analyses of the role of loopholes in facilitating the ineffectiveness of campaign finance laws. The analyses will be conducted under these sub-sections: one, a conceptual assessment of loopholes; two, a brief history of federal Campaign finance reform laws and the impact of loopholes; three, sub-national case studies regarding the impact of loopholes; and four, documented strategies employed to circumvent campaign finance laws.

The Concept of Loopholes

As will be demonstrated, campaign finance laws at all levels of government, appear to be laced with loopholes. A loophole is a technicality which allows an individual or other entity to exploit a gap or gaps in the requirements of a law, contract, or court decision for personal advantage, but without appearing to break that law, contract, or court decision.[14] In other words, by enabling certain requirements of laws, contracts, or court decisions to be circumvented legally, a loophole possesses the capacity of rendering such requirements significantly unenforceable.

Further, in an effort to reveal the potency of loopholes in rendering campaign finance laws ineffective, some important aspects are noteworthy.[15] One, certain situations might be outside of the control of legislators; such as, their inability to predict whether or not a piece of legislation will be free of loopholes. On the other hand, some may contend that certain loopholes are created deliberately for the purpose of assuring an outcome that is advantageous to legislators and their supporters. Two, outside groups that benefit from loopholes may lobby policymakers to leave them in place, in order to simplify the circumvention of the law in question. Three, the fact that political parties and legislators are also beneficiaries of *soft money* (money contributed directly to political parties, for party-building purposes, that is not regulated by federal campaign finance laws); and *bundling* (the practice of combining several small contributions into one large contribution), both of which are strategies employed to circumvent spending limits imposed by campaign laws, would imply that there might be no real enthusiasm on the part of lawmakers to close such loopholes. An application of this principle will be carried out within the history of campaign finance laws that follow.

A Brief History of Campaign Finance Reform Laws and Impact of Loopholes

This sub-section will provide analyses of the major federal campaign finance reform laws enacted between 1907 and 2002: *the Tillman Act of 1907; the Federal Corrupt Practices Act of 1925; the Hatch Act of 1940; the Federal Election Campaign Act (FECA) of 1971; the 1974 Amendments to the Federal Election Campaign Act of 1971; and, the Bipartisan Campaign Reform Act (BCRA) of 2002.* The purpose of this analysis is threefold: one, to demonstrate that the United States has a long history campaign finance reform; two, to show that this long history of reforms has so far been inadequate in addressing the problem satisfactorily; and three, to highlight the role of loopholes in rendering the pieces of legislation somewhat unenforceable.

First, *the Tillman Act of 1907* was enacted to achieve these purposes: one, to ban direct campaign contributions from corporations and banks to those running in federal elections; and two, to sever the relationship "between special interests and politics" by regulating the influence of corporate money on the outcome of elections.[16] This law was ineffective because loopholes allowed it to be circumvented through these measures: one, indirect funding to candidates made through what was referred to as *election year bonuses*; and two, generous contributions made to candidates by corporate presidents and chief executive officers.[17]

These were the specific strategies adopted by the corporations to circumvent the law:[18] One, by giving their employees large bonuses dubbed *election year bonuses*, but with the understanding that portions of such bonuses were to be donated to a candidate the leadership of the companies had endorsed, the corporations were able to circumvent the law legally. Two, by succeeding in making financial contributions to candidates of their choice, through this circumvention, the corporations were able to gain political access and to influence the outcome of elections. Three, in addition to the accomplishments above, the corporations also sought and received tax deductions from the government on the basis of the "*employee benefits*" or election year bonuses they had granted to their workers.

Based on the circumvention strategies stated above, both the corporations and politicians managed to obtain benefits on a mutual basis. The corporations were able to: one, finance the campaigns of chosen candidates indirectly thereby gaining both political access and influence; two, obtain tax expenditures (tax revenues which the government loses as a result of exemptions, deductions, and special treatments in tax laws) apparently to make up for expenses incurred in their indirect financing of the campaigns of chosen candidates; and three, satisfy their own vested economic interests. On the other hand, politicians continued obtaining unrestricted campaign finance contributions from corporations, thereby satisfying their own vested political interests. Finally, it is significant to emphasize the fact that the money which flowed between the corporations and the politicians actually belonged to the tax payers.

Second, *the Federal Corrupt Practices Act of 1925*, which remained in effect until the mid-1970's, was enacted to achieve these purposes: one, to impose limitations on campaign expenditures; and two, to disclose receipts and expenditures by House candidates, Senate candidates, and political committees which attempted to influence federal elections in more than one state.[19]

Loopholes in the law allowed its circumvention through these methods: one, rather than establishing just one committee, a large number of committees were created to support a candidate; two, this multiple committee system meant that it was almost impossible to determine which committee was giving how much money to which candidate; and three, it was also difficult to ascertain a committee's total expenditure on a particular candidate.[20] In addition, the law had excluded electoral campaigns involving presidential and vice presidential candidates; and moreover, because of the difficulties regarding a lack of enforcement mechanism, no one was ever prosecuted under this law.[21]

Third, *the Hatch Act of 1940* was enacted to limit the amount of money an individual can donate to a candidate; and, to prohibit political activities by certain federal employees.[22] However, because the law was generally interpreted as one that allowed contributions to a number of committees that supported the same candidate, the limitation of contributions imposed by this law was de facto meaningless.[23]

Fourth, *the Federal Election Campaign Act of 1971* was enacted to achieve these purposes: one, to limit the amount of money wealthy or self-financed candidates and their families can spend to gain federal elective office; two, to impose a limitation on the amount of money candidates can spend in order to secure access to the media; and three, to impose more rigorous requirements regarding the disclosure of contributions and expenditures, by candidates who ran for federal office.[24] However, the increase in campaign spending in the 1972 elections, which had been caused by a circumvention of the law by certain candidates, demonstrated clearly that the law had not been as effective as originally contemplated.

The incidents that follow, which constituted increased spending in the 1972 election cycle, became the primary reason for amending the 1971 law.[25] One, by spending over $60 million, President Richard Nixon's reelection campaign [of 1972] had spent more than double the amount spent in his 1968 bid for the presidency. This development was in sharp contrast to one of the goals of the 1971 law which was to limit the amount of money spent by candidates for federal office. Two, there was also documented evidence of widespread illegal and unethical practices by the Committee to Reelect the Republican President Nixon, along with some Democratic Party campaigns that were also purported to have adopted similar self-aggrandizing political strategies.[26]

Fifth, as a result of the demonstrated ineffectiveness of the 1971 law, *the 1974 Amendments to the Federal Election Campaign Act of 1971* were therefore enacted to achieve these requirements:[27] one, that presidential elections should be publicly-financed;

two, that candidates who accepted such public financing must also accept a limit on campaign spending; three, that individual contributions to any campaign in a single election must not surpass the threshold of $1,000; four, that the total amount of money donated by an individual to all campaigns within a given year should be no more than $25,000; five, that political action committee (PAC) contributions to any campaign should be no more than $5,000 per election; and six, the establishment of an independent and bipartisan *Federal Election Commission* (FEC) to preside over a supposedly improved set of reporting and enforcement requirements. Conceptually, a PAC is defined as “a group [organization] that raises and spends money in order to influence the outcome of an election”.[28]

However, due to a successful legal challenge that was mounted against this 1974 law, in *Buckley v. Valeo* (1976), Congress made a series of revisions in the law to reflect the decision of the Supreme Court. These revisions or amendments to the 1974 amendments were: one, the imposition of limitations on all contributions made to candidates; two, the public disclosure of all contributions that were over $200; three, the partial public financing for presidential primaries; and four, the total public financing of presidential elections for candidates that accepted campaign spending limits voluntarily.[29] The fourth provision allowed presidential candidates who would not accept total public financing to continue soliciting and spending money amassed from private sources.

Despite these efforts at regulating the demand for and supply of money in electoral politics, federal legislators still found ways to ensure the continued massive infusion of financial resources by circumventing these *imposed* requirements. This skillful maneuvering was carried out through the strategies that follow.[30] One, since the 1976 amendments made no mention of public financing in congressional elections, this meant that all 435 members of Congress were to continue with the solicitation of private funding from special interests. Two, apparently because of concerns that political activities may be stifled at the sub-national level, due to some of the stipulations contained in the amendment, Congress amended the law again in order to allow state and local parties to solicit unlimited amounts of money (*soft money)* for *party-building* purposes; and three, even though some may regard this aspect as an unintended consequence, the new limits on contributions nevertheless brought about the explosion of PACs which were now free to raise and spend unlimited amounts of *soft money* under the umbrella of *party-building*. The strategic exploitation of this loophole in the amendments led to a burgeoning and uncontrollable increase in *soft money* accumulations and expenditures by the political parties. In sum, it is particularly the troubling issue of the explosion of *soft money*, which had not been addressed by FECA that eventually became the primary reason underlying the next reform effort.

Sixth, *the Bipartisan Campaign Reform Act of 2002* was enacted to achieve these purposes: one, to impose a ban on unlimited amounts of money or *soft money* donated to political parties; two, to regulate the use of campaign advertisements paid for by special interests; three, to prohibit issue advocacy advertisements within thirty days of a primary election and sixty days of a general election; four, to limit the amount of individual contributions made to a campaign to $2,000 (an increase from $1,000 under the 1974 amendments); five, to limit the amount an individual can donate to all federal candidates to $95,000 over a two- year election cycle (an increase from $25,000 per year under the 1974 amendments); and six, to limit the contributions of individuals to state and local parties to no more than $10,000 per year.[31] Issue advocacy ads are "advertisements that support issues or candidates without telling constituents how to vote"; also, because such ads are paid for by *soft money* and as a result not regulated, they tend to promote certain political positions without the endorsement of particular candidates.[32]

However, despite the stated intent of the legislation to address the issue of *soft money*, it actually failed to do so as a result of a loophole which political activists discovered in this new law. Since they do not endorse candidates and as a result do not fall under the same campaign finance restrictions as political parties and PACs, *issue advocacy groups* referred to as 527s, fully exploited the loopholes in the new legislation.[33] In other words, as long as 527s refrained from working officially with campaigns and candidates, they could continue collecting and distributing unlimited amounts of *soft money*. For example, in the election cycle of 2004, 527s are said to have "spent more than $550 million to 'advocate positions'" which was a five-fold increase compared to the election cycle of 2000.[34] In addition, certain major corporations circumvented the law by simply increasing the number of their PACs in an attempt to amass more money for their favorite candidates. As a result of this strategy and "… according to the FEC data, the total number of corporate PACs increased to 1, 538 in 2003".[35]

Sub-National Case Studies Regarding the Impact of Loopholes

These case studies are only a representative national sample of *political transactions* in campaign financing. They are intended to shed light on the rampant occurrences of loopholes in the campaign finance laws at the state and local levels of government, including the District of Columbia. They clearly show that a significant number of campaign finance laws enacted in these various sub-national jurisdictions were actually circumvented legally to render the goal of regulating campaign financing almost insignificant.

Specifically, these cases illustrate numerous examples of: one, *bundling*; two, the proliferation of *soft money;* three, deliberate increases in the number of PACs for the purpose of increasing the amount of donations beyond those stipulated by the campaign finance regulations; four, the steady and vigorous formation of quid pro quo relationships, between politicians and their donors, already addressed under the corruption aspect of this study; five, situations depicting conflicts of interests; and six, deliberate attempts by politicians at evading the disclosure of the sources of contributions into their campaigns. Apparently because there are benefits to be mustered, the relationships among political actors become systemic, continuous, and enduring; to the extent that their impropriety in the public sector has been called into question by increasingly large segments of the American electorate. A sample of these cases follows below.

- "State law forbids individuals, companies, unions, and political clubs from donating more than $4,000 to a candidate for local office. But in this year's *Baltimore* mayoral race, some developers, government vendors and lawyers have blown past the donation limit with ease. They've done it by spreading out their donations via wives, sisters, husbands, in-laws and other family members. More often than not, they gave through multiple companies. Limited liability partnerships [LLPs] are a favorite vehicle because – unlike contributions through corporations, unions or political clubs – donors using LLPs do not have to disclose their identity".[36]

- "Here's a way around the campaign finance law that a number of [2012] presidential hopefuls are exploiting. Rather than establishing a federal political action committee to help pay for the cost of exploring the feasibility of running, some hopefuls are using state organizations instead. Donors give to multiple state organizations, thereby avoiding the donation limit for a single federal PAC. On a single day in October, Eldon and Regina Roth each wrote separate checks to political funds set up by Republican Mitt Romney in five states around the country. That allowed the *South Dakota* beef barons to donate $190,000 – well beyond limits for contributions to federal political action committees".[37]

- "*New Jersey* taxpayers don't pay directly for the costly campaigns state politicians run, but public money regularly goes to government contractors who in turn make sure that candidates are well funded. Thanks to loopholes in campaign finance laws at the state and county levels, the biggest government contractors in *New Jersey* routinely get lucrative, taxpayer-funded work while simultaneously making huge contributions to candidates who vote to approve their contracts".[38]

- "A newly created loophole in state regulations allowed more than 500 large campaign contributors to escape public disclosure before the recent municipal elections, according to a research report issued Thursday by the *Illinois* Campaign for Political Reform. Because of the loophole, nearly $500,000 in contributions to 190 candidate and party committees was hidden from public view until after the February and April elections according to the report, 'Piece by Piece, Check by Check'".[39]

- "*South Dakota's* campaign finance laws limit individuals to giving only $1,000 per election to a legislative candidate or $4,000 to a statewide candidate. A loophole in state law allows individuals to set up political action committees and give up to $10,000 to each one. More than one person can donate to a PAC, leaving those committees in a position to amass large sums that that they can then dish out to candidates. Those PACs can then give unlimited donations to any candidate, party or committee".[40]

- "*Maryland* is notorious for its lax campaign finance laws. The state's infamous 'LLC loophole' allows a business owner to found an unlimited number of limited liability companies and have them direct huge amounts of money to candidate accounts".[41]

- "In 2006, *Florida* taxpayers doled out $11.1 million to 10 candidates running for governor or Cabinet-level offices. But four of the candidates taking taxpayer cash for their campaigns, including Dave Aronberg and Jeff Atwater, both from Palm Beach County, also are raising money for separate political committees that have no limits on contributions or expenditures. 'That's just a blatant evasion', said University of Florida Professor Clifford A. Jones, a campaign finance law expert. 'I'm not saying it's illegal, but it's a pretty big loophole."[42]

- "…. Bauer uncovered millions in donations to *state-level* presidential PACs, many in the form of five and six figure checks that would have been banned at the federal level. For example, Romney, the former Massachusetts Governor collected the maximum $5,000 into his federal PAC from Edward Conard, managing director of the investment firm Bain Capital, which Romney helped found. But Conard also gave $68,000, more than 10 times the federal limit, to Romney's various state PACs".[43]

- "Hidden in the maze of *D.C.'s* campaign laws is a loophole that allows corporations to make multiple donations to political campaigns. The council members are aware of this loophole, of course, and they are taking full advantage of it. Twelve donors to Councilman Jack Evans are registered to a single address: 7811 Montrose Road, Suite 500, in Potomac, Md. Each company gave him the maximum $500, while none included an actual person's name".[44]

"*Michigan's* campaign finance laws are designed to let voters know whose money is trying to influence them. Yet it's impossible to tell where more than $4 million – nearly 40% - of money spent on TV ads during the gubernatorial primary races came from. That's because seven groups running what are known as issue ads exploited a loophole in state campaign finance law. The loophole allows groups to hide their donors so long as their ads don't explicitly urge a vote for or against a candidate. Two other groups used the loophole in radio ads, disguising which special interests may be trying to sway votes".[45]

Documented Strategies Employed to Circumvent Campaign Finance Laws

A 2009 study by the Center for Governmental Studies has identified certain strategies politicians have employed for the purpose of by-passing campaign finance regulations. As a consequence, these strategies have increased the amount of money received by candidates over and beyond the limitations mandated by law; allowed special interests to have access to candidates; and enabled such groups to influence the outcome of elections.[46] The study refers to these types of alternative donations as *non-campaign entities*. These nine types of evasive practices, described below, [47] will reveal evidence of *quid pro quo* relationships, the mass proliferation of *soft money*, and the manifestation of illegal activities to some extent.

- *Candidate Controlled Ballot Measures Committees* – are campaign committees controlled by candidates and elected officials, in certain states like California, which raise and spend money on behalf of one or more ballot measures; without regard to whether such measures are ever funded.[48] Ballot measures are direct democracy issues of governance that may appear in the form of *referenda* (legislature-initiated) or *initiatives* (voter-initiated).[49] Because there are no limitations to contributions made, politicians bent on maximizing their campaign coffers may take advantage of the opportunity to raise significant amounts of money. For example, former California Governor Arnold Schwarzenegger is said to have raised a total sum of $6.5 million within a six-month period in 2009.[50]

- *Legal Defense Funds* – are funds which elected officials are allowed to solicit for their own personal legal defense. However, some have used the funds for non-legal defense matters; while others have continued to raise such funds even after a legal matter may have been resolved.[51] For example, "The New York Times reported that former New York State Senator Guy Vellela (who had been charged with bribery) used some of the money he amassed in a legal defense fund on country club memberships, an expensive pool cover, expensive automobiles (some cars were listed as 'mobile office') and veterinary visits for office pets".[52]

- *Inaugural/Swearing-in Committees* – are committees created by elected officials "to raise funds for a ceremonial occasion with the stated purpose of relieving the taxpayers of the burden paying for a public celebration".[53] However, such committees have allowed officials to raise funds far in excess of the limits imposed by campaign finance laws. For example, "In Georgia, the Inaugural Committee of Governor Perdue accepted $200,000 from AT&T in 2007, [which was] four times as much as any other donor and 20 times [more] of what the corporation could [otherwise] have donated directly to the governor's reelection campaign",[54] under the existing campaign laws.

- *Leadership PACs* - are political party organizations in legislatures that raise money for these purposes: one, to advance the goals of the party; two, to fund party members that run for party leadership positions; three, to pay for the travel, office, consulting, and polling expenses of party candidates; and four, to fund the campaigns of party candidates and threatened incumbents.[55] Further, according to the Center for Responsive Politics, "… some use their PACs to hire additional staff – sometimes even family members".[56] Since, in most cases, contributions to these PACs are regarded as outside of the regulations of campaign finance laws, enormous amounts of money would be raised as a result.

  This example is one that shows the use of such money to fund the campaigns of party candidates: "An investigation provided by Change Illinois revealed that in one recent legislative race a Democratic candidate received $1.3 million in contributions, with 94% of the contributions coming from legislative leaders, other candidate committees, party committees and interest groups. [From this entire amount], just $83,000 was contributed by individuals. His Republican opponent received $929,000 in contributions, with only 1% [of this total] donated by individuals and small contributors",[57] with the rest coming from leadership PACs.

- *Party Fundraising* – is the process by which funds are raised for political parties; a process chiefly conducted by elected officials and candidates.[58] The large unregulated donations made to political parties become the vanguard through which donors obtain access to influence politicians.[59] This is an example of how such unlimited amounts of money can be raised: “California Assembly Speaker Karen Bass sponsored the annual ‘Speaker’s Cup’ in May 2009. The ‘Speaker’s Cup’ is a significant annual Democratic Party golf fundraiser held at the Pebble Beach Country Club and Resort. Packages for donors started at $20,000 and increased to $60,000 for ‘the ultimate’ package”.[60]

- *Party Housekeeping, Officeholder and Administrative Funds* – are special party accounts, existing in some states, which allow individual donors to surpass limitations imposed on donations; but because there are no limits on donations in New York State, contributions can therefore increase exponentially.[61] For example, “In 2008, American International Group [AIG] donated $100,000 to the housekeeping fund of the state Democratic Committee in New York just before Governor Paterson launched a concerted effort to prop the giant insurer. The donation was $90,000 larger than any previous contribution made by AIG to either political party in New York. Paterson’s intervention was credited with helping AIG ‘strike a historic loan deal with the Federal Reserve to keep AIG afloat’”.[62]

- *Charitable Fundraising* – consists of *behested* contributions which are donations that are solicited by a politician to fund organizations, such as charities, which the politician supports or controls.[63] Moreover, although unrelated to campaigns, at the request of politicians, generous donations can be made by special interests that seek access to decision-makers.[64] Such contributions may, sometimes, be subject to abuse or misappropriation. For example, “Former Congressman and North Carolina State Senator Frank Balance was convicted of fraud in connection with a scheme to divert money for his own, his friends and his family’s use from a charity he had formed and then funded largely with taxpayer money while serving as the co-chairman of the Senate Appropriations Committee. The United States Attorney determined that of the $2.1 million the foundation had received over a ten-year period, at least $325,000 was spent on questionable purposes, including a $20,000 SUV for Balance's son, who was then a County District Court judge, and the diversion of more than $100,000 to his mother, son, daughter, church, and law firm".[65]

- *Reimbursed Travel* – involve extravagant payments from private sources for trips undertaken by elected officials, while still in public office. By paying for such costly trips, an impression is given that special interests may actually be attempting to gain access to decision-makers. The following is only an example of multitudes of such occurrences in the history of American politics: "In Wisconsin, some Republican legislators attended a July 2008 meeting in Chicago of the American Legislative Exchange Council (ALEC) with their travel costs paid for through 'travel scholarships' provided by private contributor membership dues to ALEC (ranging from $7,000 to $50,000). The Private Enterprise Board of the nonprofit corporation includes representatives from AT&T, UPS, Bayer, GlaxoSmithKline, Johnson & Johnson, PhRMA, Wal-Mart, Coca-Cola, Intuit, ExxonMobil, Pfizer, and others."[66]

- *Personal Use of Campaign Funds* – Although most states have enacted laws against the private use of campaign funds, such laws may not be effective because they are not specific; in addition, candidates may use funds for any activity that may bear semblance to their campaigns without appearing to violate such laws.[67] However, if the candidate's spending appears to be rather extravagant, suspicions may be aroused. For example, "In Ohio, Attorney General Marc Dann resigned and was investigated for at least two dozen violations of Ohio campaign finance laws, most of which related to personal use of campaign funds. The violations included spending campaign money on an elaborate home security system, cell

> phone service for his family members, and family trips and gifts for friends. A former aide to Dann was quoted as saying, 'I've never seen people go through money as fast as them [sic] two in my life'".[68]

Court Decisions: The Federal Courts' Interpretation of the First Amendment and Exploited Loopholes in Court Decisions

The federal courts to be addressed are the United States Supreme Court, which is the national appellate court of last resort; and, the United States Court of Appeals for the District of Columbia (DC) Circuit. The role of the United States federal courts in crafting national public policies is significant because of their preemptive impact on the states and their respective localities. Usually, American citizens tend to call upon the services of the Supreme Court when it appears as if the political branches of government, the executive and legislative, are either unwilling or unable to address effectively or satisfactorily an issue of grave public concern. Campaign finance reform has been no exception to these issues of grave public concern.

Given the above, this section of the study will address two salient issues regarding the influence of the courts in American electoral politics. One, it will address the decisions of the courts pertaining to the constitutionality of certain campaign finance laws on the basis of freedom of speech rights in the First Amendment to the national Constitution. A brief examination of these decisions will demonstrate that in their attempt to weigh free speech rights against perceived acts of corruption by candidates and elected officials, the courts actually contributed to a further increase in candidate fund-raising and spending. Two, this section will also highlight the exploitation, by political factions and individuals, of the loopholes that had been created as a result of the decisions of the courts, to the extent that the role of money in electoral politics increased in its intensity. These outcomes, it is significant to indicate, stand in complete contrast to the original systemic goal of limiting the volume and influence of money in electoral politics.

Therefore, toward the fulfillment of this objective, the applicable cases to be examined are: one, *Buckley v. Valeo* (1976); two, *Colorado Republican Federal Campaign Committee v. FEC* (1996); three, *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007); four, *EMILY's List v. Federal Election Commission* (2009); and, five, *Citizens United v. Federal Election Commission* (2010).

First, in *Buckley v. Valeo* (1976) whereby a challenge was launched against the *Federal Election Campaign Act* of 1971, the United States Supreme Court arrived at these decisions: one, that "restrictions on individual contributions to political campaigns and candidates did not violate the First Amendment" because it guards against unscrupulous [*corrupt*] practices; and two, that "the governmental restriction of independent expenditures in campaigns, the limitation of expenditures by candidates from their own personal or family resources, and the limitation on total campaign expenditures, did violate the First Amendment. Since these practices do not enhance the potential for corruption that individual contributions to candidates do, the court found that restricting them did not serve a government interest great enough to warrant a curtailment on free speech and association".[69]

The practical effects of the court's decision are: one, the provision of an underlying basis whereby various groups could raise and spend enormous amounts of money for political candidates; and two, an increase in the spending of the personal resources of candidates and elected officials that could afford to do so. With regard to PACs, there were only 608 of them in 1976; however by 1996, their numbers had increased enormously to more than 4,000 in an apparent attempt at capitalizing on the court's ruling.[70] Further, according to the Federal Election Commission, the federally-registered PACs in the 2009-2010 election cycles which numbered 4,618, raised a total amount of $557.7 million, spent a total amount of $464.6 million, and contributed a total amount of $174.4 million to candidates running for public office.[71] These outcomes were a demonstration of the fact that the *Buckley* decision exacerbated the increase of money in electoral politics.

Second, in *Colorado Republican Federal Campaign Committee v. FEC* (1996), the United States Supreme Court decided that the *Federal Election Campaign Act* of 1971 was in violation of the First Amendment because the expenditure made by the political party in question was *independent* since it was not coordinated with a candidate.[72] As a result of this decision, political parties were able to raise record-breaking amounts of *soft money* in 1996 to the tune of $260 million, which was three times the amount raised in 1992, money that was widely used for individual campaigns.[73]

Third, in *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007), the United States Supreme Court "essentially declared the ban [by the *Bipartisan Campaign Reform Act of 2002*] on the groups using a candidate's name in issue advocacy ads thirty days before a primary election and sixty days before a general election, unconstitutional".[74] In other words, the ban was tantamount to a violation of free speech rights.

The impact of this ruling was speculated to bring about a deluge of spending in campaign financing. For example, Jennifer L. Hochstadt suggests that the decision would bring about less regulation of money in politics; "significantly weaken restrictions on broadcast advertisements during election campaigns"; reduce the number of ads to be regulated; pave the way for the return of *sham issue ads* because of the expansion of the definition for *issue ads*; allow an unlimited supply of corporate money to pay for advertisements in the weeks prior to primary and general elections; and eventually, provide an opportunity for corporate and union money to perform even bigger roles in election politics.[75] Some of these arguments appear to have been supported by the fact that, in the federal election cycle of 2000, there was an approximate expenditure level of $629 million on television advertising alone.[76] In the 2008 election cycle, there was an approximate expenditure of $2 billion on television advertising; which registered a colossal increase from the expenditure level undertaken in the 2000 election cycle.[77]

Fourth, in *EMILY's List v. Federal Election Commission* (2009) the United States Court of Appeals for the District of Columbia Circuit invalidated three FEC regulations, governing the allocation of money in federal elections by non-connected groups or PACs on the basis that they violated free speech in the First Amendment.[78] As a non-connected group, which is defined as an organization that may accept funds from individuals and business PACs,[79] EMILY's List became a beneficiary of this decision. This case was not heard by the Supreme Court of the United States because the FEC declined to challenge the ruling of the DC circuit.

Regarding non-connected groups and their tendency to increase the solicitation and expenditure of money in elections, this decision had certain significant implications that continue to be applicable. For example, Reid Wilson suggests that "independent political organizations will be able to raise and spend significantly more money on voter registration drives and advertisements that refer to political parties".[80] In addition, following this decision, EMILY's List is purported to have elevated its adeptness at the exploitation of the *bundling* and 527 loopholes in order to increase fund-raising and spending in electoral politics.[81]

Fifth, in *Citizens United v. Federal Election Commission* (2010), the Supreme Court arrived at these pivotal decisions in support of free speech rights: one, it "removed BCRA restrictions on corporate (and presumably union) funded electioneering communications"; and two, it "struck down FECA restrictions on the use of money directly from corporate (again, presumably union as well) treasuries to explicitly campaign directly for or against candidates for federal (and likely state as well) office, so long as such efforts were done independently".[82] Electioneering communications refer to the regulated use of broadcast, cable, or satellite communications by candidates running for federal office.[83]

According to a study conducted by the civic organization referred to as *Public Citizen*, the court's ruling actually contributed greatly in worsening the influence of money in electoral politics. Salient aspects of the study are summarized below:[84]

- While the disclosure of donors declined, the expenditure by special interests increased by 427% over the 2010 mid-term elections.

- Spending by special interests increased to $294.2 million in the 2010 election cycle from just $68.9 million in 2006.

- "Of the $294.2 million spent in the 2010 cycle, $228.2 million (or 77.6 percent) was spent by groups that accepted contributions larger than $5,000 (the previous maximum a federal political action committee, or PAC, could accept in a single cycle) or that did not reveal any information about the sources of their money".

- "Nearly half of the money spent ($138.5 million, or 47.1 percent) came from only 10 groups".

- "Of the 308 groups (excluding party committees) that reported spending money on electioneering communications or independent expenditures to influence the 2010 election cycle, only 166 (53.9 percent) provided any information about their sources of money before the elections".

- "Groups that did not provide any information about their sources of money collectively spent $135.6 million, 46.1 percent of the total spent by outside groups during the election cycle".

- "Among the top 10 groups, which accounted for nearly half of all spending, seven disclosed nothing about their donors. These seven groups accounted for 73.6 percent of the total amount spent by the top 10 groups".

- These top 10 spending outside groups are listed as – the U.S. Chamber of Commerce; American Crossroads; American Action Network Inc; Crossroads Grassroots Policy Strategies; American Future Fund; Americans for Job Security; SEIU-COPE; American Federation of State, County, and Municipal Employees AFLCIO; 60 Plus Association; and, National Rifle Association of America Political Victory Fund.

- "Among groups broadcasting electioneering communications, nearly 100 percent disclosed their funders in the 2004 and 2006 election cycles (the first two election cycles after BCRA created this category of campaign ads). [However], in the 2008 elections, the first after *Wisconsin Right to Life*, the share of groups disclosing their funders plummeted to less than 50 percent. In 2010, barely a third of electioneering communications groups disclosed their funders".

- "Among groups making independent expenditures (expenditures expressly intended to influence elections) disclosure of donors fell from 90 percent in 2004 and 97 percent in 2006 to only 70 percent in 2010".

- "…. spending by outside groups was focused on close elections, and appeared to have a significant effect on results. Of [the] 75 congressional contests in which partisan power changed hands, spending by outside groups favored the winning candidate in 60 [of those contests]. In the six Senate contests in which power changed hands, winning candidates enjoyed an average advantage of $2.7 million over their opponents in spending by outside groups that either accepted".

The lifting of limitations on campaign contributions increased the potential that electoral politics would be flooded with more money; and that, special interests that donated the most money to candidates might ultimately be in a vantage position to determine the outcome of elections and secure access to elected officials. This posture, which is not necessarily a guaranteed outcome in practically all cases, is nevertheless exactly what had transpired in certain Senate races conducted in the midterm election cycle of 2010 – the same year in which the court's decision was made.

According to the *Public Citizen* study, certain candidates who won elections had received an increased amount of outside group donations than their defeated counterparts. These are examples of the results in that election cycle:[85] one, in the Illinois race, Mark Kirk (R) the winner, received a total of $7,949,559 more than his opponent Alexander Giannoulias (D); two, in the Pennsylvania race, Pat Toomey (R) the winner, received a total of $5,262,414 more than his opponent Joseph Sestak (D); three, in the Wisconsin race, Ronald Harold Johnson (R) the winner, received $2,116,647 more than his opponent Russ Feingold (D); four, in the Arizona race, John Boozman (R) the winner, received $750,530 whereas his opponent, Blanche Lincoln (D), received no donations from outside groups; and five, in the Indiana race, Daniel Coates (R) the winner, received $274,975 more than his opponent Brad Ellsworth (D). In these cases, the outcome of the elections appeared to have been dictated by the reservoir of money the winning candidates possessed compared to their opponents.

The primary vanguard through which the explosion of campaign finances has taken place is an accelerated version of *PACs* referred to as *Super PACs*, as a result of their tendency to amass and distribute unlimited amounts of campaign finances legally. The legality of *Super PACs* emerged as a result of the FEC's interpretation of the Supreme Court's decision in *Citizens United* that individuals and organizations are allowed to form committees that may raise "unlimited amounts of money to run advertising for and against candidates so long as their efforts were not coordinated with those of the candidates".[86] As a result, these organizations did not only dominate the mid-term 2010 election cycle regarding the relaxation of campaign regulations and the explosion of funding,[87] as the *Public* Citizen study demonstrates; but also, they have continued to influence extensively the current 2012 Republican presidential primaries as demonstrated in the next paragraph.

Toward the end of February 2012, in which more than half of the total number of primaries and caucuses are yet to be contested, the remaining presidential candidates have already acquired and spent enormous amounts of funding from just their respective *Super PACs*. This is far from being the total amount of campaign funds in hand because other sources of fundraising also exist. These statistics constitute a summary of the financial accumulations of the candidates through their respective *Super PACs*:[88] Mitt Romney raised a total of $36.8 million through "Restore Our Future"; Newt Gingrich raised $13.2 million through "Winning Our Future"; Rick Santorum raised $3.0 million through "Red, White, and Blue Fund" and "Leaders for Families"; and Ron Paul raised $3.6 million through "Santa Rita" and "Endorse Liberty".

According to a study that was partly authored by the *Public Interest Research Group* (PIRG), individuals and organizations that provide the bulk of funding for *Super PACs* would not only have disproportionate access to, and influence on, politicians; but they would also be promoting views that may not be representative of a cross-section of the American electorate.[89] Moreover, in an attempt to demonstrate the negative impact which the emergence of these organizations might have on democracy, United States Representative Hank Johnson, a Democrat from Georgia, stated that "In the last two years, super PACs raised more than $180 million – with roughly half of it coming from fewer than 200 super-rich people and roughly 20 percent from corporations"[90]. Further, the Center for Responsive Politics states that "As of March 14, 2012, 378 groups organized as Super PACs have reported total receipts of $130,518,240 and total independent expenditures of $75,769,101 in the 2012 [election] cycle".[91] All these developments point to the continuation of a calamitous exacerbation of the influence of money in American electoral politics, despite all the measures that have been undertaken to curb such influences for over 100 years.

Conclusion

Therefore, based on the compilation of analyses postulated above, it would seem as if the unlimited flow of money into the coffers of political candidates will certainly continue to permeate American electoral politics into the unforeseeable future. The writer shall attempt to exemplify this concluding remark within the parameters of the factors which will be the subject of further analyses below.

First, from a theoretical perspective, the step that logically precedes a proposed solution toward addressing any problem effectively is the ability to identify the problem in its entirety. This phenomenon would require a thorough understanding of the nature, cause, impact, and ramifications of such a problem. The failure to identify the problem in this comprehensive manner would imply logically that a solution toward addressing such a problem, no matter how it might have been defined or conceptualized, cannot possibly be effective in its proposed form, because a significant aspect or aspects of the problem may not have been taken into account.

For example, in this particular case, the salient problem is a prevailing concern that the unlimited supply of money would have *corrupting* influences on the electoral process, in the sense that its availability would increase the probability that political favors from elected officials could easily be solicited by the suppliers of campaign funds *quid pro quo*. However, since the policy approaches thus far have not been comprehensive, due to their failure to articulate a clear definition of exactly what constitutes public sector or *quid pro quo* political corruption, the problem of the unlimited flow of money into the electoral process has, as a result, remained largely unaddressed. Public sector corruption and the flow of money into electoral campaigns are integral parts of a larger problem that must be addressed collectively if reformers are to be successful in their quest to minimize the influence of money in electoral politics.

Second, the costs of campaigns in the United Sates have increased greatly because of media advertising, travel, campaign organization, printing campaign materials, getting out the vote, and the competitive nature of races among candidates. This is indeed the case at all three levels of government.[92] Because increases in campaign costs have also increased the dependency of candidates on outside sources to finance their respective campaigns, there is a growing concern that such dependency will also increase the potential for more corruption. This is because politicians that are not self-financed, who are in the absolute majority, will be obligated to those who would have contributed to their elections or reelections, as the case may be. This type of mutual dependency appears to have made it difficult, if not impossible, for politicians to actually make a concerted effort at crafting laws that would be effective in minimizing the influence of money in electoral politics.

Third, another dimension regarding a confluence of interests between politicians and vested interests also continues to pose a major obstacle toward the effective regulation of money in electoral politics. For example, elected officials in legislatures, such as the United States Congress, would consistently opt to remain in office as incumbents for career-enhancement reasons. However, the achievement of an incumbency status would significantly be dependent on the reliability of the flow of campaign funds from vested interest groups and individuals that support the legislator’s candidacy. In return for that support, vested interests would hope to obtain the benefits which they would certainly demand from the candidate in *quid pro quo* fashion.

This principle regarding the iron-clad mutuality of political interests, between candidates and their campaign funders, was effectively communicated in 1896 by a Congress member of that Gilded Age – the era of rapid economic and population growth. Citing the relationship between his politics and big business, Boies Penrose, the Republican

Senator from Pennsylvania, articulated this statement: “I believe in the division of labor. You send us to Congress; we pass laws under which you make money … and out of your profits, you further contribute to our campaign funds to send us back again to pass more laws to enable you to make more money”.[93]

Three recently-published works appear to support the notion that the Penrose categorization of legislative or Congressional behavior is still applicable within the current climate of electoral politics. In his book entitled *The Great Financial Deformation: How Crony Capitalism Corrupts Free Markets and Democracy* David Stockman, the former Director of the Office of Management and Budget (OMB) in the Reagan administration, “shares details on how the courtship of politics and high finance have turned our economy into a private club that rewards the super-rich and corporations, leaving the average Americans wondering how it could happen and who’s really in charge”.[94] In their book entitled *Reckless Endangerment: How Outsized Ambition, Greed, and Corruption Led to Economic Armageddon*, Gretchen Morgenson and Joshua Rosner reveal “… how the financial meltdown emerged from the toxic interplay of Washington, Wall Street, and corrupt mortgage lenders”.[95] Finally, in her book entitled *Patriot Acts: What Americans Must Do to Save the Republic*, Catherine Crier, a former elected Texas State Judge, indicate that “…all politicians depend on donations from large corporations to cover the costs of their increasingly expensive campaigns. The money buys influence. We see the results not only in Congress, but in court decisions which more frequently favor the corporations. The corporations, for their part, pony up the donations willingly. They know these are among the canniest investments they can make. The same is true for lobbying, and expenditures in this area have ballooned in recent years, mostly coming from the coffers of big business”.[96]

In addition to the stipulations above, some have articulated the view that Congress’ 1999 repeal of the Glass-Steagall legislation of 1933, brought about by pressure from the banking industry, was directly responsible for the financial collapse of 2007-2009 because it allowed banks and insurance companies to merge, a stipulation which had been disallowed by the legislation.[97] Further, Glass-Steagall had imposed these additional restrictions as control measures on the potential money-making *excesses* of financial institutions: authorizing the Federal Reserve to regulate national banks stringently; prohibiting commercial banks from selling securities; and establishing the Federal Deposits Insurance Corporation (FDIC) which insured banks by using bank deposits.[98]

Apparently realizing the necessity to have in place a regulatory regime for financial institutions in the interest of consumers, following the financial collapse, Congress passed the Dodd-Frank piece of legislation in 2010. This law, regarded not as effective as Glass-Steagall, allowed some of the large commercial banks; such as, JPMorgan Chase, Citigroup, and Bank of America to retain the bulk of their derivatives.[99] Vested interests in the financial and banking industries consistently used their financing resources to influence this Congressional effort. For example, the Independent Community Bankers of America "spent $1 million in the first three months of this year [2011] to lobby against [the bill's] implementation"; the Financial Services Roundtable "is on pace to spend $10 million on lobbying in 2011"; "the American Bankers Association is expected to beat its $7.5 million spent last year [2010], based on first-quarter-2011 numbers; JP Morgan Chase and Citigroup are expected to spend $7 million and $5 million, respectively; and "Wells Fargo, which spent $5 million last year [2010], spent $1.9 million in just the first quarter of this year [2011]"[100]. In addition, some of the more powerful interest groups attempted to derail the legislation, even before its passage, because of concerns that the financial and banking industries would lose tens of billions of dollars in profits if the legislation was allowed to become law.[101] Perhaps at the behest of their campaign finance contributors, some of the 2012 Republican presidential candidates have threatened to repeal this law if elected to office.

Fourth, because the United States Supreme Court has itself not provided a definition for exactly what would constitute *quid pro quo* political corruption,[102] politicians will certainly continue to take advantage of this opening in pursuit of their vested political ends. Adding to the confusion and uncertainty regarding campaign finance reform, at least two lower federal courts have made contradictory decisions regarding what constitutes *quid pro quo* political corruption. In 2007, the United States Court of Appeals of the Second Circuit, in *U.S. v Ganim*, "held that to establish bribery involving political contributions requires proof of an 'explicit' quid pro quo, meaning 'an express promise'"[103]. However, in 2011, the United States Court of Appeals of the Eleventh Circuit, in *U.S. v Siegelman*, "held that 'explicit' does not mean an 'express' or actually and clearly stated promise that an official action will be controlled by a contribution. Rather, 'explicit' quid pro quo can mean only a state of mind inferred from perhaps suspicious circumstances".[104]

All these factors provide evidence that it will be extremely difficult, perhaps even impossible, to establish a campaign finance system that will be bereft of *quid pro quo* relationships between politicians and financial donors. As a matter of fact, some do regard these relationships as a part and parcel of the vicissitudes or transactions within this democracy.[105] For example, Larry Noble, one of a number of panelists assembled by the Brookings Institution in 2004 to discuss the state of corruption in the United States and the world concluded the conference by stating that … "ultimately there wasn't – and shouldn't - be a perfect solution in sight. There is no end game to this because you're dealing with conflicting principles and forces that are natural to any democracy. There never will be an end to the struggle. There can't be. This is all part of the care and feeding of democracy and you can't get discouraged by it".[106] However, as this study has demonstrated, many will disagree with this statement; including the *Occupy Movement*, which has emerged primarily as an antidote to what its ever-growing membership regard as excessive corruption and unaccountability in government. Therefore, if the prevailing political and legal conditions continue to constitute serious obstacles to a meaningful resolution of these myriad of problems, it would then appear to this writer that another constitutional conventional, symptomatic of the 1787 political experience, might be in order.

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