

A World Without Rules

Covering Campaigns

IOP Nieman Conference

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\$ How Did We Get Here? \$

1972 – Watergate

- Suitcases stuffed with cash**
- Secret slush fund**
- Controlled by the president**
- Milk industry executives**
- Used to punish political enemies**
- Unrestricted money**

Federal Election Campaign Act

- **CONTRIBUTION LIMITS**

Candidates, Parties

- **NO CORPORATE & LABOR MONEY**

- **FULL DISCLOSURE**

- **FEDERAL ELECTION COMMISSION**

- **PRESIDENTIAL PUBLIC FINANCING**

Buckley v. Valeo, 1976

Constitutional:

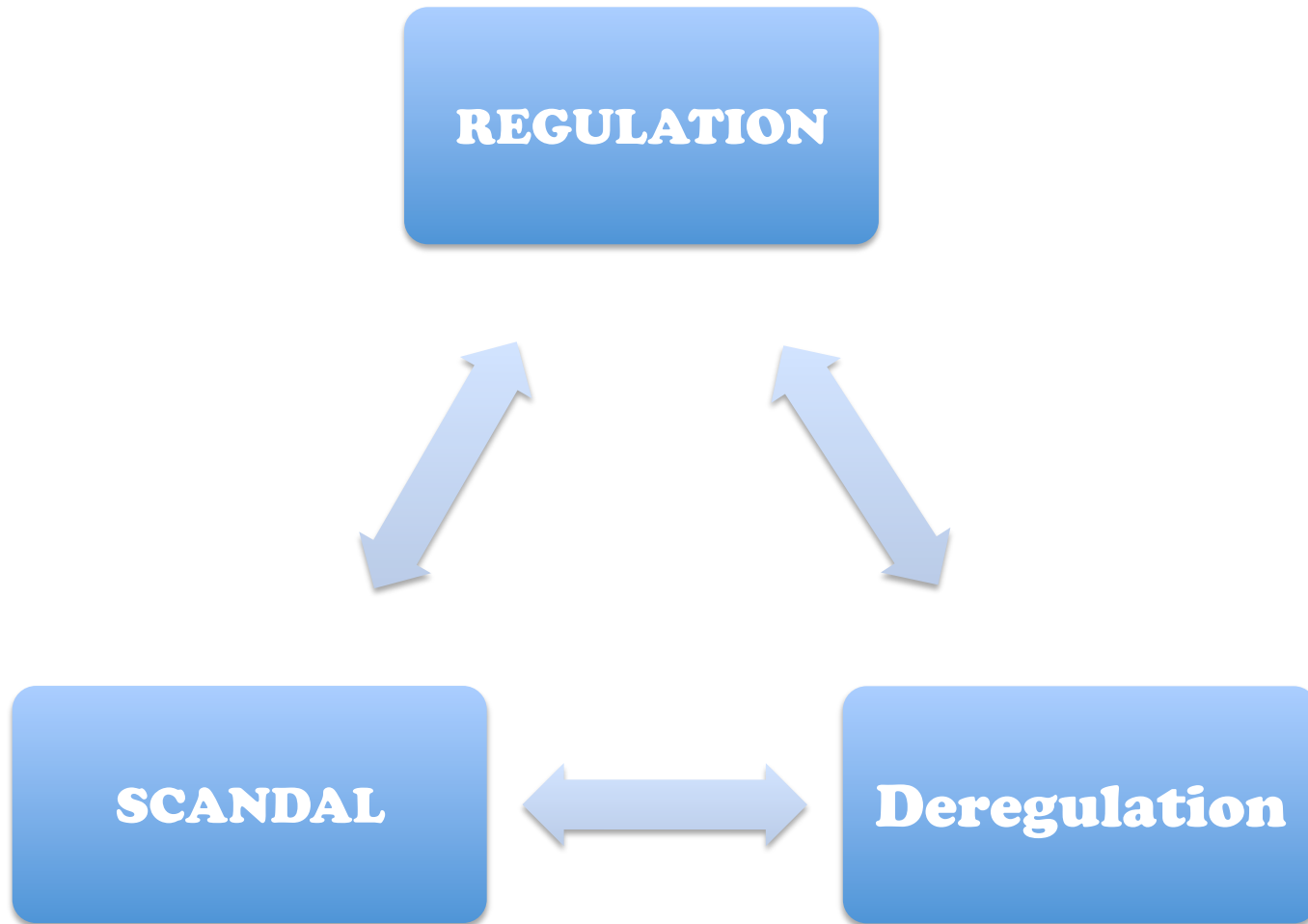
Limits to prevent corruption, appearance of corruption

Unconstitutional:

Limits on campaign spending

Campaign spending = constitutionally protected free speech

A Predictable Cycle



ENTER SOFT MONEY

- **FEC Advisory Opinion – 1978**
- **Unrestricted \$ for “Party Building”**
- **Politicians solicit \$ for parties**
- **1990s – Soft Money Explodes**
- **Issue ads, candidate slush funds**
- **Foreign Money**
- **Lincoln Bedroom**

Bipartisan Campaign Reform Act

- **“McCain-Feingold” Law**
- **Bans soft money**
- **No soft money for pre-election candidate issue ads**
- **Upheld in **McConnell v. FEC** (2002)**
- **Exhaustive testimony**
(Lawnakers, donors fed up)

Citizens United v. FEC

- **2010: New Supreme Court**
- **Unconstitutional: Limits on *independent* political spending**
- **Rationale: Money is independent, fully disclosed, therefore non-corrupting**

Outcome of Citizens United

- **With Speech Now v. FEC, ushered in super PACs**
- **Super PACs = Unrestricted, fully disclosed, corporate & union**
- **Unleashed both for profit and nonprofit corporations**

Theory Versus Practice

- **Independent?**

Stalelated FEC can't enforce coordination rules. Candidates raise the money. Circumvents contribution limits

- **Fully Disclosed?**

Nonprofit corporations operate outside the disclosure rules

A March Toward Deregulation

- **Conservatives:**

Now that outside groups have big money, parties should too

- **Businessman Shaun McCutcheon:**

Aggregate party contribution limit is unconstitutional

McCutcheon v. FEC

- **Unconstitutional:**

Limits on political money that do not present direct threat of quid pro quo corruption

What's Next?

Challenge to direct party and candidate contribution limits

The Return of Soft Money

- **Contribution limit = \$2,700 to a candidate, \$33,400 to a party committee**
- **McCutcheon ruling freed up joint fundraising committees that collect \$100,000 or more at a time**
- **Reid-McConnell “cromnibus” deal included rider allowing parties to raise 10 x normal limit for conventions, buildings, recounts**

“Dark Money”

- **Social welfare & trade groups purport to engage in education & issue ads**
- **Activities & ads indistinguishable from campaign activities & ads**
- **No restriction on size or source of contribution, no disclosure**
- **IRS blew enforcement (tea party targeting), angered GOP, now paralyzed**

Who Raises the Money?



Jeb Bush:

Not an official candidate, raising unlimited \$ for Right to Rise super PAC

Hilary Clinton:

**Raising money for Priorities USA Super PAC, theoretically in \$5,000 increments.
(Nod, wink.)**

What to Look For

Super PAC fundraising

- **Candidate-specific super PACs**
- **Coordination rules not enforced**

Tax-Exempt Groups

Non-disclosing, politically active, possible IRS & FEC violations

Foreign Money

Forget Clinton Foundation. See Jeb Bush, John Kasich, Rand Paul, Carly Fiorina nonprofits

More Trends in 2016

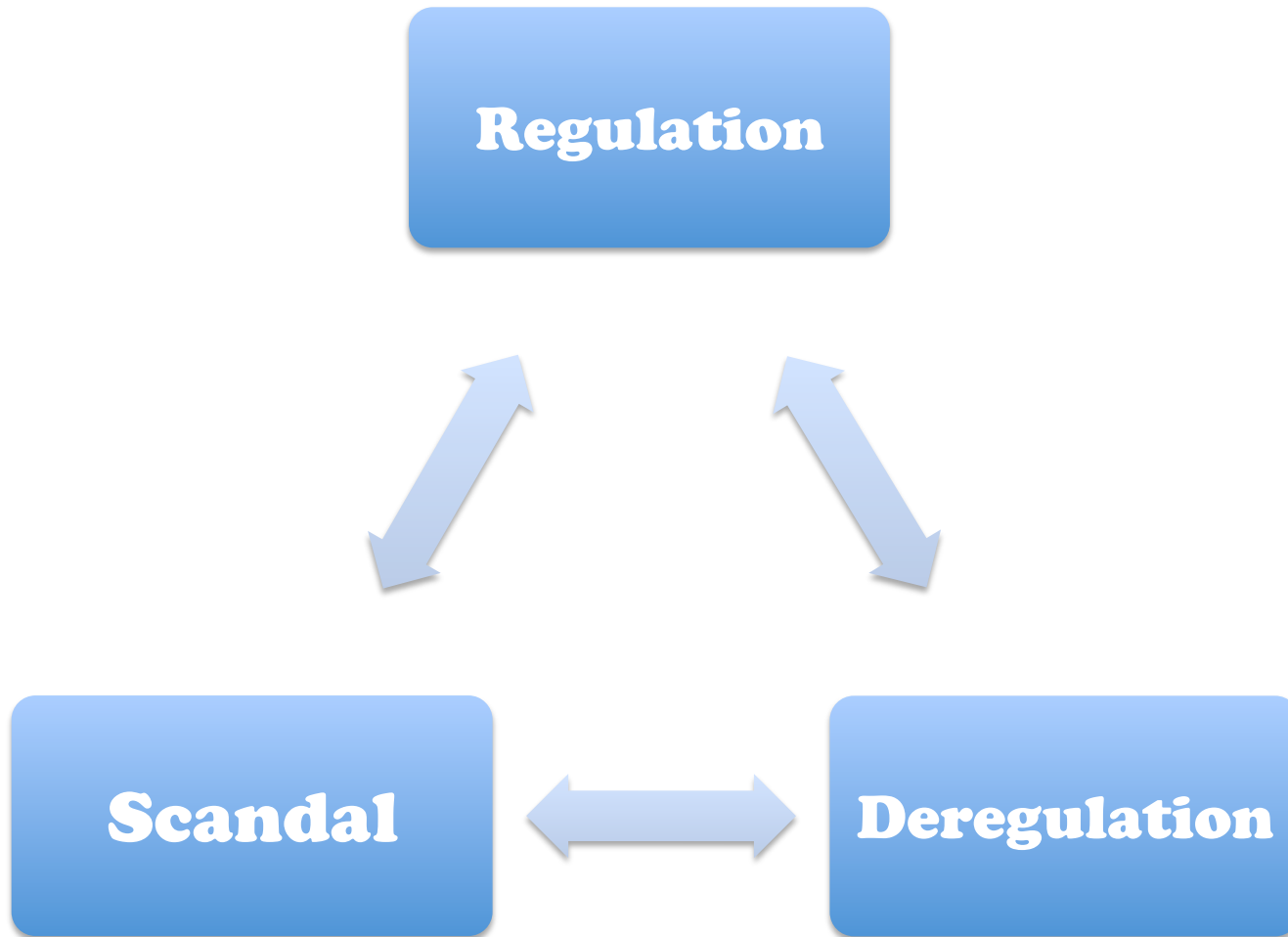
- **Joint Fundraising Committees**
- **Leadership PACs, campaign committees & parties band together to solicit huge sums**
- **Massive Political Party Fundraising**
- **The special convention, building & recount accounts are already scooping up millions from CEOs, lobbyists**
- **Limited Liability Corporations**
- **For-profit vehicle to raise & move around undisclosed, unlimited money. Koch network**

What's Next?

More Deregulation

- **Court challenges to contribution limit**
 - **Limits nonexistent anyway**
- **Voter disgust, political pressure.
(Watch for it!)**

Back to the Future



SUPER PACS

How is a **PAC** different from a **super PAC**?

- A conventional **PAC** may give or receive no more than \$5,000 per election, may take no corporate or labor treasury money, may give directly to a candidate.
- A **super PAC** may take any amount from any source, but may not give directly to a candidate or party and may not coordinate with either. May spend money independently.

TAX-EXEMPT GROUPS

- **CHARITIES – 501(c)(3)** – NO partisan political activity. Only nonpartisan voter reg. or GOTV. Very limited lobbying permitted. (Boy Scouts, Red Cross)
- **SOCIAL WELFARE GROUPS – (501)(c)(4)** – Unlimited lobbying. Some political activity as long as it is not their primary purpose. Rule of thumb: No more than 50 percent. IRS rules ambiguous. Huge IRS fight. Politically charged. (Americans for Prosperity, NRA.)
- **TRADE ASSOCIATIONS – 501(c)(6)** – Largely same rules as social welfare groups. (Chamber of Commerce, Motion Picture Association.) Restricted class.
- **LABOR UNIONS – 501(c)(5)** – Money is no mystery because it comes from dues. Expenditures reported to Labor Department. (AFL-CIO, AFSCME, SEIU.)
- → <http://kcerds.dol-esa.gov/query/getOrgQry.do>

Important Court Cases

- **Buckley v. Valeo, 1976** – Upheld the post-Watergate reforms known as the Federal Election Campaign Act, which established contribution limits, PACs, now-defund presidential public financing system.
- **McConnell v. FEC, 2003** - Upheld the Bipartisan Campaign Reform Act, also known as McCain-Feingold, which banned unlimited “soft” money contributions to the parties.
- **Citizens United v. FEC, 2010** – Struck as unconstitutional the ban on campaign spending by corporations and unions, as long as that money is spend independently from candidates.
- **McCutcheon v. FEC, 2014** – Struck as unconstitutional the aggregate (overall) limits on campaign contributions. Paves the way for big fundraising by so-called joint fundraising committees.
- **Additional Cases: Campaign Legal Center**

GLOSSARY

- **HARD MONEY** – Regulated money subject to limits on the size and source of the contribution.
- **SOFT MONEY** – Unrestricted money that may come in any amount from any source.
- **CAMPAIGN EXPENDITURE** – An ad, message or mailing that identifies a specific candidate and uses words like “vote for” and “vote against.” Express Advocacy.
- **ISSUE AD** – An issue-focused message that does not use words like “vote for” and “vote against.” Advocacy. Can look a lot like a campaign ad. (Explains undisclosed spending.)
- **INDEPENDENT EXPENDITURE** – Campaign expenditure made without coordination with the candidate whom the ad backs. Call it an independent campaign expenditure.

GLOSSARY, CONT.

- ELECTIONEERING COMMUNICATION -. A broadcast ad that pictures or names a candidate 60 days before a primary or 30 days before a general election. Candidate-focused advocacy must be disclosed in this window.
- PAC – A conventional, regulated PAC may raise or donate no more than \$5,000.
- SUPER PAC– Unrestricted PAC that must disclose but may raise and spend unlimited money from any source as long as it does so independent from the candidate or party it supports.
- JOINT FUNDRAISING COMMITTEE – A collective campaign account that allows multiple players – groups of party committees, candidates, PACs, or any combination of the above – to raise large checks into one account that is then distributed according to the contribution limits.

Glossary, Cont.

- LIMITED LIABILITY CORPORATION – A type of business entity that brings together two or more players in corporate form. Some LLCs make no money, thereby avoiding the need to report income to the IRS, but move money around to political groups under the radar.
- BUNDLING – Rounding up hard money checks to donate to a candidate in a big stack.
- LEADERSHIP PAC – A personal PAC run by an elected official. No longer just leaders. Arguably a means to evade contribution limits.
- RESTRICTED CLASS – Executives, administrators, members and stockholders of a corporation or labor union.