The role of money in political campaigns is a complex and contentious topic. While campaign finance has been debated and regulated for more than one hundred years in the United States, the 2012 election cycle has brought the debate to the forefront of many political conversations. The intersection of recent court rulings with federal, state and local laws, along with the rise of new political entities such as SuperPACs, have amplified the dialogue.

While the topic of campaign finance gets plenty of attention—from lawmakers, the press, advocacy organizations and even the occasional comedian—few policy makers have stepped back in recent years to assess the system as a whole. In order to best assess how to move forward, it is helpful to first explore why campaign finance regulations exist in the first place, and how they fit, or fail to fit, into the twenty-first century election landscape.

Origins of U.S. Campaign Finance Regulations

At the heart of the campaign finance dialogue is the idea of corruption—or, at the very least, the fear of corruption. Whether (and in what way) the financing of campaigns actually leads to government corruption is debated by many. In addition, whether campaign finance regulations successfully—and constitutionally—limit corruption is a source of much discussion. These ideas will be presented in more detail in later briefings.

What is clear, however, is that many laws have been proposed, passed and implemented since the founding of our nation in attempts to prevent corruption by government officials. Some researchers point out that the earliest attempts to prevent corruption in public office can be seen in the U.S. Constitution. Anti-patronage language prevented elected officials from self-appointing or from being appointed to civil service offices that were created or promoted while they were in office. Limited term lengths for members of Congress aimed to prevent them from forming overly tight bonds with the executive branch.[1]

Controversial campaigning tactics have also been in existence for centuries. George Washington is believed to have purchased a quart of rum, wine, beer and hard cider for every voter in his district (391 voters) when he ran for the Virginia House of Burgesses.

Until the Civil War, however, there were no laws specifically regulating campaign finance contributions. Electioneering techniques grew slowly in our country, and political activity and interest was limited to an elite few in the early days of our nation's history.[2] By 1800, aggressive propaganda campaigns were seen in Thomas Jefferson's run for office, but campaigns (and voters) were still limited in scope, and divisive party politics waxed and waned over the years within relatively small circles.

The first attempts to regulate federal elections campaigns weren't seen until shortly after the rise of mass electoral politics in the mid-19th century.[3] Early candidates in U.S. elections typically financed their own campaigns, which generally were small and geared towards a small audience of party elites. However, Andrew Jackson's 1828 campaign introduced a new style and magnitude of political

[1] Hannah Arendt Center for Humanities, A Brief History of Campaign Finance, 2012
[2] Dinkin, Robert. Campaigning in America: A History of Election Processes. 1989
[3] CQ Researcher: Campaign Finance Debates. 2010.

campaigning, designed to appeal directly to voters. A resurgence of party politics brought the first extensive nationwide campaigns, and gave rise to election components that remain part of our system today—nominating conventions, party platforms, and get-out-the-vote efforts.[4]

With this new form of campaigning came newly sought methods of financing by way of the "Spoils System." Campaign contributions came from assessments on current federal employees and solicitations from those who hoped to become federal employees, both done in the anticipation of continued job rewards. Public employees were rewarded with political appointments for support, and removed from office if their party lost the election.[5]

Some argued in support of the spoils system as a way of maintaining an active party organization. But public outcry against non-merit based political appointments led to eventual changes—nearly forty years later—via a limited ban of assessments on naval yard workers (1867 Naval Appropriations Act). Over the next two decades, this was followed by more general bans on solicitations from federal workers.[6] The Pendleton Federal Civil Service Act of 1883 provided a foundation for the adoption of a merit system, and by the end of the 20th century merit systems had mostly replaced spoils systems in federal, state and local levels of government.[7]

At the same time, campaign finance expenditures grew by leaps and bounds. By the end of the 19th century, corporations and wealthy individuals had become the next major source of campaign financing. Accusations of corrupt actions by government officials were rampant, and Theodore Roosevelt (himself accused of such corruption with 73% of his presidential campaign funds coming from corporate contributions) asked Congress in 1905 for a ban on corporate contributions to federal campaigns to stem "bribery and corruption."[8] Beginning with the Tillman Act in 1907—which banned corporations and national banks from contributing to federal candidates—and including additional reforms over the next half a century, campaign finance reform as a widespread concept was born.

All of these early reforms were perceived to have limited "success," as most early measures lacked structure, enforcement measures and penalties for compliance. The Federal Corrupt Practices Act (1910), which required congressmen to disclose the names of campaign contributors and limit the amount of money that politicians could spend, was the primary governing legislation for campaign finance until 1971. However, the Act was dubbed "more loophole than law" by President Lyndon B. Johnson.

What is notable, however, is that regardless of how or if these laws were enforced, they and numerous other reform measures were passed in direct response to accusations of corruption. The Teapot Dome Scandal, for example, saw President Harding accused of fraudulently offering oil leases to private oil companies that had (among other accusations) been big donors to the Republican National Committee, which helped Harding win his election.[9] Public outcry led to revision of the Federal Corrupt Practices Act in 1925, with additional disclosure laws and spending caps. Public protest led to similar campaign finance changes in the forms of the Taft-Hartley Act (1947), which banned federal contributions from labor unions following a steel workers strike in the middle of WWII, and the Hatch Act (1939) which

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[4] Dinkin
[5] Britannica Academic Edition, http://www.britannica.com/EBchecked/topic/560744/spoils-system
[6] CQ and Hannah Arendt articles
[7] Britannica
[8] CQ
[9] Brookings Institute http://academic.brooklyn.cuny.edu/history/johnson/teapotdome.htm

came in response to accusations that the Democratic Party was using federal agency jobs to gain political advantage. The Hatch Act banned contributions to federal candidates from federal workers and set individual contribution limits to federal candidates.

Then, in 1974, significant reform—and the first structure for campaign finance law *enforcement*—came on the heels of the Watergate Scandal. Amendments to the 1971 Federal Election Campaign Act (FECA) overhauled campaign finance regulations by building a comprehensive system of regulations (including public financing of presidential campaigns) and enforcement mechanisms.[10] FECA simultaneously created the Federal Election Commission to enforce these regulations, and the modern system of campaign finance regulation was born.

Finally, the 2002 Bi-Partisan Campaign Reform Act (BCRA) was the final comprehensive reform effort in the U.S. to date. This was the result of a widespread perception of inappropriate influence peddling via soft money, where political parties used loopholes in existing campaign finance regulations. They put unlimited amounts of money into activities such as unregulated get-out-the-vote drives and "issues" ads, which the FEC ruled could mention candidates by name so long as they did not expressly advocate for or against a candidate (e.g. instead they could say "call Senator Jones and tell him how you feel about his bill to increase income taxes.").[11]

While the specific mechanisms of all of these reforms often differed, they were fundamentally similar in that they were passed to minimize corruption or perceived corruption. Some measures limited or banned certain types of contributions, some required public disclosure, and so on. Some (such as BCRA) were attempts to clean up unintended consequences of previous reforms by stemming new tides of money that were triggered when other contribution streams were prohibited.

At the same time as these waves of reform were passing through Congress, however, many of the new regulations were being challenged—and overturned—in the courts. The landmark Buckley V. Valeo (1976), for example, determined that spending limits impede free speech. A series of subsequent court decisions—including Citizens United in 2010—have kept the campaign finance system in a perpetual state of motion. Laws have passed, laws have been overturned, new laws have been created, and loopholes have been used as a way to skirt the new laws.

Ultimately, it is the intersection of ongoing reforms and the attempts to stem them that have brought us, at least in part, to where we are today: The highest campaign spending in history, the dominance of new political entities dubbed Super PACs, and a great debate as to what measures—if any—should be taken to revise the campaign finance regulation system.

Next brief:
History of legal challenges to campaign finance regulations, and more on the corruption debate…

[10] Washington Post Special Report on Campaign Finance
[11] FEC Campaign Finance Quick Law