A history of campaign finance reform — from George Washington to Shaun McCutcheon

By Jaime Fuller, April 3, 2014

Yesterday, the Supreme Court decided to eliminate limits on aggregate campaign contributions in the case *McCutcheon v. FEC.* Many people watching the case had called it the sequel to *Citizens United.* However, it's more like the latest, inevitable film of an unending franchise. *McCutcheon v. FEC* is probably more like the *Saw IV* of campaign finance, at least as far as reformers are concerned. For those who agree with the Supreme Court's latest decisions, *McCutcheon v. FEC* is probably more like the latest *Land Before Time* movie -- returning us back to a land with founding fathers and without election filings and regulation.

Regardless, the point stands: There has been a steady unraveling of campaign finance laws in the past decade. But, this is also nothing new. Ambrose Bierce defined "politics" in the late 19th century as "A strife of interests masquerading as a contest of principles." Campaign finance reformers would probably describe it in the exact same terms today.

Here's a short history of the ups and downs of campaign finance reform.

1757: When George Washington lost an election to the Virginia House of Burgesses in 1755, he decided he needed to improve outreach. Two years later, he bought about $195 worth of punch and hard cider for friends, and managed to win. However, the newly elected legislature quickly passed a law prohibiting candidates "or any persons on their behalf" from giving voters "money, meat, drink, entertainment or provision or … any present, gift, reward or entertainment etc. in order to be elected."

1867: Congress passed a naval appropriations bill that marked the first time the federal government tried to regulate campaign finance. The law made it illegal for government officials to solicit naval yard workers for money.

1883: The Pendleton Civil Service Reform Act was passed. This law made it illegal for government officials to solicit contributions from any civil service workers, or award these positions based on anything but merit. Previously, many people who worked in government were expected to pay up to keep their jobs. The Civil Service Reform Act had wide public support; it was passed two years after James Garfield was assassinated by Charles Guiteau, who was denied a political appointment by the president.

1905: The 1904 presidential campaign "crystallized popular sentiment" on the subject of money and politics. In his message to Congress after being elected, President Theodore Roosevelt invoked the power "to protect the integrity of the elections of its own officials [as] inherent" in government, and called for "vigorous measures to eradicate" perceived political corruption, for he found "no enemy of free government more dangerous and none so insidious." He also suggested that "(a)ll contributions by corporations to any political committee or for any political purpose should be forbidden by law" and public financing of political candidates. His proposal did not include a ban on contributions from people who run companies.

Roosevelt's wrath was prompted in part by the 1896 election in which his former running mate, William McKinley, won after raising about $16 million -- $6 or 7 million from those corporations that filled the gap left by the Civil Service Act. The McKinley administration, in turn, was very pro-business. States around the country were passing their own campaign finance laws, and in 1905, Roosevelt made the above remarks in a message to Congress.

1907: And two years later, Roosevelt's prescription became reality when the Tillman Act was passed. The law made corporate contributions to federal candidates illegal, but didn't do much to solve the problem since there was no good way to enforce it.

1910: Congress passed another law that sounds nice in theory -- if they could only implement it. The Federal Corrupt Practices Act said that House candidates need to disclose their finances. In 1911, Senate

and primary candidates were given the same dictum and expenditure limits were set for all congressional candidates. Ten years later, the Supreme Court reversed the 1911 regulation on primaries and nominating processes in *Newberry v. United States*. A 1941 Supreme Court case gave back the power of regulating primaries to Congress, after Congress tried to legislate it again in 1940 with the Hatch Act, also known as "An Act to Prevent Pernicious Political Activities."

In 1925, the law was revised to expand the list of who must file reports, which they said must be sent on a quarterly basis. All contributions over $100 needed to be reported. They also raised the limit on Senate spending to $25,000.

However, most of these edicts were easily avoided. Donors would just set up multiple committees, donating less than $100 at a time to each. There were no penalties for failing to file. Congress, the only body of government affected by most of the campaign finance reform, made no moves to legislate stricter enforcement.

In 1934, the Supreme Court upheld Congress' disclosure requirements.

1913: The 17th Amendment is passed, which calls for the direct election of senators, instead of election by state legislatures. More elections meant more money.

1943: The Smith-Connally Act passed. Now unions were prohibited from donating to federal candidates, just like corporations and banks. During the '30s, unions had started using dues as political donations, hence the law. This year marks the 50th anniversary of the first PAC, formed by the Congress of Industrial Organizations (CIO). The labor union used the PAC as a workaround for Congress' extension of the corporate money ban to unions (there's always a loophole!). Because they weren't using dues, it wasn't illegal.

1947: As you can see, the 1940s were a boom time for campaign finance activity. In this year, the Taft-Hartley Act passed, banning corporations and unions from even making independent expenditures in federal political campaigns. As long as candidates promised not to use their primary money during the general election campaign or collect private donations, they could campaign with publicly funded dollars.

1967: After nearly 50 years of having it on the law books, Congress decided to finally collect campaign finance reports.

The 1970s: Know that box you can check on tax forms to donate $3 to the Presidential Election Campaign Fund? That was legislated in the 1971 Revenue Act -- although it used to be only $1. The Federal Election Campaign Act was also passed in 1971, which got into the weeds and provided many a restriction and clarification on campaign finance laws. The law was amended after Watergate to provide even more clarifications.

In 1976, the Supreme Court struck down some of the provisions in the Federal Election Campaign Act in the case *Buckley v. Valeo*, saying they violated the First Amendment. Caps on campaign spending and candidate and family contributions to their own campaign were lifted, as were limits on independent expenditures. Corporations and unions were allowed to do electioneering for "issue advocacy," as long as they didn't mention words like "elect."

1990: The Supreme Court ruled in *Austin v. Michigan Chamber of Commerce* that Michigan's law banning corporations from using company money for independent expenditures was constitutional, saying Michigan had a compelling state interest in stopping corruption.

1992: President George H.W. Bush vetoed a bill that sought to provide partial public financing for congressional candidates.

2002: The McCain-Feingold Bipartisan Campaign Reform Act was the first big thing that happened in campaign finance reform in three decades. John McCain and Russ Feingold had previously tried to pass similar legislation in the '90s.

Its main goal was to limit the use of "soft money," which had grown after implementation of the Federal Election Campaign Act (again, loopholes always win). Soft money -- which wasn't regulated by the federal government -- was money raised by national parties and political actions committees for "get-out-the-vote" campaign efforts and other organization-building activities. Because the money's purpose is sort of mushy, the laws regulating it were equally vague. Parties were raising unlimited funds for these activities and using them for far wider purposes than just voter registration. After BCRA, this type of fundraising was deeply curtailed. It made things very confusing for federal fundraisers, who didn't know what things they'd been doing for decades were now illegal. 501(c)s and 527s were exempt from the soft-money ban, and political interest in these groups jumped after the law was passed. However, these groups were banned from the type of electioneering allowed after *Buckley v. Valeo* -- ads were a no-no 30 days from a primary or 60 days from an election. So was direct advocacy for a candidate.

2003: BCRA was sent to the Supreme Court, a surprise to no one, the year after its passage. Kentucky Sen. Mitch McConnell has always been against BCRA, filibustering it several times before its passage. He filed a suit, as did the California Democratic Party and National Rifle Association, saying the law was too broad and limited their First Amendment rights. The Court upheld the law, saying that despite the law's breadth, "money, like water, will always find an outlet."

2006: Vermont had the strictest caps on campaign contributions in the country, which the Supreme Court ruled unconstitutional in *Randall v. Sorrell,* saying it was a violation of the First Amendment, reaffirming the 1976 *Buckley v. Valeo* decision.

2007: Then the court changed course and began to chip away at McCain-Feingold. In *Federal Election Commission v. Wisconsin Right to Life, Inc.,* the Supreme Court reversed their view on issue ads in *McConnell v. FEC*, saying that limits on electioneering spending by nonprofits was unconstitutional. The "magic words" test started in the 70s (as long as you don't mention the election, it's not illegal) was brought back to life.

2008: Sen. Barack Obama became the first presidential candidate from a major party not to take public financing for the general election. He had originally said he would take public financing if nominated. "It's not an easy decision, and especially because I support a robust system of public financing of elections," he said in a video message explaining his reversal. "But the public financing of presidential elections as it exists today is broken, and we face opponents who've become masters at gaming this broken system."

His opponent, Sen. John McCain, took public financing, and criticized Obama's decision to forego the system repeatedly.

2010: In *Citizens United v. FEC*, the Supreme Court held that independent expenditures by corporations and labor unions were protected by the First Amendment, which struck down BCRA provisions -- building on previous campaign finance laws -- banning these types of expenditures.

A few months later, the Supreme Court applied their decision in *Citizens United* to the case *Speechnow.org v. FEC. Speechnow.org* argued that forcing nonprofits to file with the FEC was unconstitutional. They also wanted to accept unlimited donations from individuals, as long as they did not explicitly engage in elections (the "magic words" rule, again). The Supreme Court ruled that disclosure could infringe on the privacy of a group and its donors, and that independent-expenditure groups should be able to collect unlimited donations. Coupled with *Citizens United*, corporations and unions also are free to make unlimited contributions to these independent expenditure-only organizations. The *Speechnow.org* decision paved the way for the creation of super PACs and the growing power of 501(c)4s.

2012: For the first time, both presidential candidates did not accept public financing.

In *American Tradition Partnership v. Bullock,* the Supreme Court decided that *Citizens United* applied to Montana's century old legislation banning direct corporate political spending in 1912.

2014: And now, *McCutcheon v. FEC*. The Court ruled that aggregate contribution limits -- which caps the amount of money any single donor can give to candidates and party committees -- infringed on First Amendment rights. In many states, aggregate contribution limits were already nonexistent. The decision changes the status quo in only eight states -- Connecticut, Maine, Maryland, Massachusetts, New York, Rhode Island, Wisconsin and Wyoming.

One of the parts of the decision that could have the biggest impact on how donors deliver their money to candidates is the removal of aggregate spending caps on PAC contributions. There is no limit to the number of PACs that can exist, so donors could theoretically up their contributions to certain candidates considerably if they had enough PACs supporting them.

However, this decision will affect a small poll of donors. Fewer than 600 donors hit the existing caps in the last election cycle. The base limits for campaign contributions -- $2,600 for individual candidates and $5,000 for PACs -- remain.

The Supreme Court will decide by next week whether to look at *Iowa Right to Life Committee v. Tooker*, a case that could test the constitutionality of state bans on corporate contributions. While *Citizens United* lifted a ban on corporate spending in elections, this one would apply to direct contributions.