



# **UNITED STATES SENATE**

**117th United States Congress**

**Special Session Background Brief**

**MUNI XXV**



Dear respected delegates,

My name is James Fang, and it is my pleasure to be your director for the US Senate for MUNI 2022. I started Model UN in high school in Vancouver, British Columbia, continuing as a delegate up until junior year when I became a director then sat on secretariats at conferences around Pittsburgh, Pennsylvania.

I am currently a freshman computer science major at the University of Illinois. Model UN has helped me discover many interesting people, and I hope you will also discover people that you bond and become lifelong friends with. Aside from my CS coursework and Model UN commitments, I can be found around the VR club, performing computer science and bioinformatics research, playing piano, biking around the campus, or spending a good time with my friends.

Please feel free to email me at [zhengru3@illinois.edu](mailto:zhengru3@illinois.edu) for any concerns or inquiries. I hope you have learned something about yourselves and the world during your research process.

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Hello delegates,

My name is Keon Sung and I will be your Vice Chair in the U.S. Senate for MUNI 2022. I am currently a sophomore majoring in Political Science and Philosophy with a minor in Statistics. I started Model U.N. during freshman year of high school and have continued to participate in events ever since. I have also attended MUNI when I was in high school and I hope to use my experiences to support your experience in this committee. Besides Model UN, I also occasionally enjoy fishing (and catching nothing), listening to music, reading mostly boring books, and arguing about everything with my friends late at night.

My time at MUNI remains a fond memory that I hope to contribute towards. Despite the competitive atmosphere, there are ample opportunities for you to get to know each other, make friends, and have some diplomatic fun.

If you have any questions regarding the committee process and rules, or about research in general, you can email me at [keons2@illinois.edu](mailto:keons2@illinois.edu). Godspeed!

# US Senate Rules of Procedure

For this iteration of MUNI, a modified Rules of Procedure based on the official US Senate rules will be used. Most elements of MUN parliamentary debate will still remain, however, there are some significant changes that we expect delegates to adhere to. Usual MUN rules that aren't changed here are still valid to use during committee.

## MODERATED CAUCUS/SPEAKERS LIST

Senators have expansive rights to debate by default, thus it is the responsibility of this committee to establish debate rules. As such, there will be NO speaker's list: instead, the committee will function like a constant moderated caucus, where the chair will pick whom to speak, like usual. Speaking limits will be decided through motions to limit speaking time (i.e. "Motion to Limit Speaking Time to X minutes/seconds"), which will be voted on like in regular MUN. So, if no speaking time is agreed upon, a delegate can technically speak indefinitely, however, the dias will boot the speaker or set a speaking time at their discretion, and the speaker cannot transfer their speaking time to anyone. As usual, motions can be proposed at any time (outside of a speech) and take precedence, so to compensate for a lack of a formal moderated caucus procedure, we will decide how to specifically signal a motion proposal when we arrive at committee.

## UNMODERATED CAUCUS

Unmoderated caucuses will function primarily the same way, however, in this committee they will require a 3/5ths majority vote to pass. The motion itself will be changed to: "Motion to Suspend Rules of Debate for X minutes," however, the old motion will still be accepted if you forget. The dias will alter the time limit at their discretion as well.

## RESOLUTION WRITING/VOTING PROCEDURE

Traditional resolution procedures will be modified to reflect the U.S. legislative process, so we expect delegates to instead refer to resolutions as bills within committee. In the Senate, bills are usually put forward for debate by Congressional committees, and during debate, amendments to the bill are brought forward by individual Senators to be debated and voted on. Usually, the Republican and Democratic parties each have a bill of their own for significant issues, like healthcare and infrastructure.

Thus, for the purposes of this committee, the Republican and Democratic camps will be allowed to submit one bill each to the dais, meaning only two bills TOTAL will be submitted to the dais. The committee will then debate and vote on which bill to actually consider during committee (note: this vote is NOT on whether the bill will be passed into law; this vote is to determine which of the two proposed bills will be tabled). Thus, by the end of this process, the committee will only be left with ONE bill to debate and then ultimately vote on (the tabled bill will be considered DEFEATED). This vote will be decided by a simple majority.

Afterward, the committee will begin the amendment process, which we expect will take most of committee time. Any bloc or individual delegate can submit an amendment to the dais at any time, which includes amendments that strike down parts of the bill itself. Thus, debate during this process should be centered around what changes to add to the bill, and also on the amendments themselves. Amendments will be introduced like a working paper in regular MUN (i.e. "Motion to introduce Amendment X") and will still only require a simple majority vote to pass. After the amendment is introduced, there will be no Q/A; instead, the whole committee will debate on the amendment for a set amount of time (set by the Dais), after which the amendment will be voted on and will only require a simple majority to pass and be added to the bill. To finally vote on the bill itself, we will follow standard MUN procedure: a "Motion to Enter Voting Procedure" will close all debate on the bill and we will then proceed with a ROLL CALL vote on whether to sign the bill into law; a 3/5ths majority is required to pass a bill. Thus, entering into voting procedure should be the LAST significant motion and will likely signal an end to committee, just like in regular MUN.

Because of this structure, the initial bill should be a rough compilation of your party's main agenda, while the amendment process should be used to iron out your personal agenda. What's important about the initial bill is constructing an agreeable bill that everyone in your party can vote for, since you will need everyone on board to pass it with a simple majority. Thus, don't get too caught up in trying to build an in-depth bill at the start; focus on trying to find common ground and articulate those into the bill. Then, use the amendment process to push your own ideas out in a more comprehensive way. Even if your initial bill is defeated, your party still has ample opportunity to influence and modify the bill that does pass, which is why we place such emphasis on the amendment process. While we expect delegates to understand what their party platform is in the real world, we understand that total adherence to reality is too constricting and confusing. Thus, what we will look for in committee is that you all, as a party,

are able to come to a consensus on your party platform during the initial bill phase, then mostly stick to it in the amendment process. So, as long as your party platform is generally within expectations for the actual parties, anything is fair game as long as it's legal.

### THE FILIBUSTER

Despite common perceptions, the filibuster is not a normal occurrence in the Senate. Rather, the threat of a filibuster is often more than enough to encourage negotiations. Because our committee rules technically allow for a filibuster to take place if no speaking time is agreed upon, both the filibuster itself and the threat of one remain valid strategies for the committee. What's important to remember for both threatening and preventing a filibuster is party UNITY. Only a simple majority is needed to set a speaking time, thus only a simple majority needs to agree to not actually vote on one as well.

The only way to formally end a filibuster is to invoke cloture, which will close debate (no more amendments can be submitted or considered), but will still allow some time (as determined by the dias) for discussing the bill's merits or detriments, which will also give you time to negotiate the passage of the bill amongst yourselves. Cloture, however, requires a 3/5ths majority to pass, which can be difficult to achieve if both parties are unified. Thus, informal agreements between individual senators or the parties themselves are the most viable path towards ending a filibuster. If you can find a senator to agree to reinstate a speaking limit or come to an agreement between parties, then you can resume debate on the bill (amendments can still be submitted).

This is a powerful tool that both parties have at their disposal, especially if the bill in its current state is unacceptable to your party. If one party is railroading their own agenda through, the other can agree to unify behind a filibuster to force them to negotiate. Essentially, if you can't make progress on your amendments, then you can halt ALL progress on amendments to force the other party into making concessions. Thus, we expect delegates to use this tool to pass amendments essential to your party platform, or block amendments that are totally against your party platform.

## SUMMARY OF CHANGES

### Debate

- Refer to each other as Senators, resolutions are now bills
- NO speaker's list
- NO need to motion for a moderated caucus
  - Once debate opens, the chair will automatically accept points/motions first, and then choose a speaker
- Speaking time
  - Set through a motion: "Motion to Set Speaking Time to X minutes/seconds"
    - Simple majority to pass
- Unmoderated Caucus
  - "Motion to Suspend Rules of Debate"
    - 3/5ths majority to pass

### Resolution Writing/Voting

"Bills" (resolutions) will be debated and voted on in a three step procedure:

- Initial Bill
  - Only TWO bills accepted by Dais
    - One from the Republicans, and one from the Democrats
  - After debate, the two bills are brought to a vote on which one to primarily consider
    - Simple majority to pass
    - Other bill is tabled
- Amendments
  - Any bloc or individual senator can submit an amendment to the Dais
    - Amendments can add or subtract anything from the initial bill
  - To introduce an amendment for debate: "Motion to Introduce Amendment X"
    - Simple majority to pass (just to introduce)
  - Once introduced, NO Q/A; instead, a moderated caucus will automatically commence, with the time set by the Dais
  - After debate, the amendment will automatically be voted on
    - Simple majority to pass
- Final Vote
  - To end debate and vote on bill: "Motion to Enter into Voting Procedure"
  - 3/5ths majority to pass bill

## **EXAMPLE TIMELINE**

### DAY 1

- Opening debate
- Working out an initial bill
- Debating and voting on a bill

### DAY 2

- Debate on bill
- Amendments brought forward, debated on, and voted on
- Negotiations between senators and parties

### DAY 3

- Proposing/adjusting amendments
- Debate on passage of bill
- Final vote on bill

# TOPIC 1: CAMPAIGN FINANCE REFORM

## COMMITTEE DESCRIPTION

The United States Senate is the upper legislative body of the United States. The current 100 members of the senate are represented by two senators from each state. The US Senate first convened in 1789, after the ratification of the US constitution by nine US states, and was selected by the state legislature until 1913 when the 15th Constitutional Amendment made senators to be directly elected by voters in every state for six-year terms.

The United States Senate has the power to pass legislative bills, although the bill will also need passage in the House of Representatives and absence of executive veto to enter into effect. The Senate can also pass non-binding resolutions that express the collective opinion of the Senate, such as a collective opinion in response to a crisis. Both actions usually require a simple majority to pass. The senate can confirm political candidates into offices in the executive branch, such as Cabinet secretaries, and judicial branch servants such as Supreme Court, Appellate, and District Court judges. Finally, the Senate can vote to expel Senate members through a two-thirds majority vote and impeach executive branch officials for misconduct.

The Vice President (currently Kamala Harris) is the presiding officer (PO) of the US Senate. The VP, as the PO, ensures that the Senate rules of procedures are followed. However, the VP has presided senate debates infrequently since the 1950s, instead replaced by the president *pro tempore*, designated for the majority party's longest serving member (which, in this case, is Patrick Leahy from Vermont). The VP today is in the senate usually to break a Senate voting tie.

The Rules of Procedures will allow use of filibusters, although the dais will not encourage its frequent use. Please see the Rules of Procedures section for more information on filibusters.

As senators, the delegates are expected to represent the interests of their constituents and their political parties. The director advises, however, for the delegates to exercise discretion while using rhetoric. Please contribute to the debate, and not focus wholly on attacking other delegates for their represented stances.

## **BACKGROUND AND OVERVIEW**

Campaign finance refers to the raising and spending of money for political campaigns to influence the outcome of elections at any levels of government: local, state, and federal. These elections include not just the election of political candidates but also political initiatives or referendums. The funds raised may be directed to and spent by political candidates, parties, media and (political) information organizations, and political action committees (PACs).

In the 2020 election cycle, the top five most expensive political campaigns all numbered in hundreds of millions of dollars. Four of them are presidential campaigns, including two unsuccessful primary candidates (Michael Bloomberg, >\$1B and Tom Steyer, \$345M) and two party-backed presidential candidates (Joe Biden, >\$1B and Donald Trump, \$735M). The other was the expensive senate runoff election for Senator Jon Ossoff (\$145M) in Georgia. These campaigns do not include the outside spending not affiliated with candidates' committees.

Campaign finances can be spent by candidates or political parties on publicity campaigns, such as television, social media (i.e. Facebook) and video streaming (i.e. YouTube) ads<sup>1</sup>. They can also be spent on travel costs, political consulting, and canvassing (direct contact of voters through telephone calls or in-person visits).

Few developed nations allow as much monetary influence on politics as does the United States. In the United States, individuals and corporations with deep pockets can significantly influence the manners of lawmakers' elections and behavior through the broadcasting of information regarding political candidates. Understandably, much public anger against the establishment politicians and institutions comes from the voters' beliefs that voters have little influence in the conduct of politicians and that politicians answer to American corporate elites.

This binding influence of money in politics is further entrenched by deep, powerful fundraising networks, funded and supported by - again - powerful individuals and corporations, such as ActBlue for Democratic party candidates and WinRed for Republican party candidates<sup>2</sup>. These powerful fundraising networks also act as gatekeepers against grassroots, political

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<sup>1</sup> <https://www.opensecrets.org/campaign-expenditures>

<sup>2</sup> <https://www.opensecrets.org/campaign-expenditures/committees>

outsiders, and third-party candidates as entrenched cycles between money and publicity help establishment candidates stay in or climb offices.

Because of massive amounts of funding, elections have become extremely costly affairs. While 2016 election spending broke records, the 2020 election season doubled that. An estimated \$14.4 billion was spent on federal office candidates in 2020 alone - \$5.7B and \$8.7B on presidential and congressional candidates respectively<sup>3</sup>. For comparison, just \$3 billion in federal funding was spent on improving tabulation of votes and upgrading election equipment<sup>4</sup>. These stark differences are leading to public discontentment on voting rights.

Challenges to campaign finance reform usually invoke the First Amendment to the US Constitution as freedom of speech arguments.

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<sup>3</sup> <https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/>

<sup>4</sup>

<https://www.ncsl.org/research/elections-and-campaigns/election-costs-who-pays-and-with-which-funds.aspx>

# HISTORY

1907 - *Tillman Act*, the first campaign finance law, passed in response to 1896, 1900 and 1904 business financing of Republican Party presidential candidates. This regulation prohibits nationally chartered banks and corporations from directly financing political candidates' elections. However, corporations quickly adapted and started offering non-monetary contributions to candidates, such as office space for meetings and promotional materials.

1910s - Prohibition movement grows, with numerous states enacting ballot initiatives to ban the distribution of alcohol. Challenges against Tillman Act (1907), such as *United States v. United States Brewers Association*, arise, as breweries challenge the constitutionality of campaign finance restrictions.

1943 - First Political Action Committees form, spearheaded by the Congress of Industrial Operations (CIO) labor union. The Smith-Connally Act in the same year extended this direct contribution prohibition to labor unions.

1971 - *Federal Election Campaign Act (FECA)*, a comprehensive campaign finance regulation was passed, required political committees to disclose their sources of contribution and expenditures on a regular basis, and limited media expenditure - although this would later be ruled unconstitutional in *Buckley v. Valeo*.

1974-75 - *Watergate Scandal & FECA Amendments*: FECA was amended to form the Federal Election Commission to better enforce campaign finance restrictions.

1976 - *Buckley v. Valeo*: this Supreme Court decision upheld contribution restrictions and record-keeping requirements but ruled candidate expenditure restrictions unconstitutional. Expenditure restrictions from personal and family sources were also struck down.

1979 - FECA is amended again, this time to simplify reporting requirements for political committees and increase public funding of political candidates. This amendment loosened restrictions on soft money, political expenditures not tied down to particular candidates, which were otherwise prohibited.

2002 - *The Bipartisan Campaign Reform Act (BCRA)*, also known as McCain-Feingold Act, narrowly passes the Senate filibuster in a 60-40 vote and establishes legal restrictions on the election processes of political candidates, including campaign financing.

2003 - *McConnell vs Federal Election Commission (FEC)*: Mitch McConnell, Republican senator from Kentucky, sues the FEC. The Supreme Court of the United States (SCOTUS) upholds much of BCRA. The key provisions of BCRA upheld include the sources of fundraising for political candidates and limitations on use of corporate or [labor] union funds to disseminate political information.

2010 - *Citizens United vs Federal Election Commission*: SCOTUS strikes down Section 203 of BCRA, with the legal rationale that corporations, like individuals, have (First Amendment) rights to spend independently to support or oppose political candidates. SCOTUS rules that the monetary limitations on the ability for corporations to express political opinions are unconstitutional.

2019 - Michael Bloomberg spends over \$1 billion to fund his failed bid in the Democratic primary for US presidency, generating highly negative publicity. Bloomberg was labeled for attempting to “buy” US elections and political offices for himself. Bloomberg would later spend hundreds of millions more dollars towards Joe Biden’s ultimately successful presidential campaign.

## **HISTORICAL ANALYSIS**

Campaign finance is not a new problem. From the corrupt Democratic political machines in Chicago and New York (Tammany Hall) in the late 1800s to expensive fundraiser dinners in the 2020 primaries (i.e. Kamala Harris, Pete Buttigieg), political campaigns have relied on money to organize and reach out to voters. Many presidents, such as both Roosevelts, recognized the need for campaign finance regulations and attempted to regulate them. However, patterns in campaign finance continue to evolve, bringing new sets of challenges for every administration.

Some patterns in campaign finance emerge: new restrictions are introduced, many regulations are then struck down by the US Supreme Court, then Congress attempts to work around Supreme Court rulings, and the cat-and-mouse like cycle begins anew.

Invocation of First Amendment Rights has historically been a major challenge to the federal government's attempts to regulate expenditures relating to campaign finance. The patterns in Supreme Court rulings suggest that the First Amendment rights would not only encompass the content of (political) speech that organizations can make, but also the amount of political speech and the manners they are expressed in.

With the rise of the internet from the 1990s on, the nature of campaign finance-related political speech has also changed significantly. Previously, political speech was transmitted over the radio or the television, and it was much more difficult and expensive to transmit. The internet ushered in an age of overabundance of information where any individual or group can easily distribute political information to large numbers of people, and for organizations to collect and analyze massive amounts of data. The internet has also made campaign fundraising patterns murkier because it is much easier for political party/candidate committees and independent groups to solicit donors over the internet, as shown by powerful networks such as ActBlue<sup>5</sup> and WinRed<sup>6</sup>, or Super PACs such as Senate Majority PAC or America First PAC<sup>7</sup>.

This overabundance of information has led to an ever more convoluted landscape with many different players, between political committees and independent expenditure groups, all at work airing political information. Now political committees and organizations compete for voters' attention. To compete for the ever-scarce attention, ever-vulgar, polarizing and at times absurd political information (and insinuations) are produced and distributed<sup>8</sup>. Political information, such as ads, that contain the three traits stated above appeal to human emotion - oftentimes rage - to increase the reach and memorability of the messages that these political broadcasts attempt to deliver<sup>9</sup>.

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<sup>5</sup> <https://secure.actblue.com/>

<sup>6</sup> <https://winred.com/>

<sup>7</sup> <https://www.opensecrets.org/outsidespending/summ.php?cycle=2020&chrt=V&disp=O&type=S>

<sup>8</sup> <https://www.businessinsider.com/tennessee-senate-election-polls-ads-race-bredesen-blackburn-2018-10>

<sup>9</sup> <https://www.frontiersin.org/articles/10.3389/fpsyg.2021.781851/full>

# CURRENT SITUATION

## Who is who?

To understand the situation with campaign financing, distinct groups with distinctive interests and rights must be defined.

Candidate committees, such as Warnock for Georgia for Raphael Warnock's 2020 bid to the US Senate, are committees directly coordinated and linked with political candidates<sup>10</sup>. Federal Electoral Commission rules state that all candidates with over \$5,000 in political spending must register with a linked committee with FEC. Unsurprisingly, candidate committees face the most restrictions on fundraising and spending because they are directly coordinated and linked with political candidates. Independent donors can only donate up to \$2,900 a year to candidate committees.

Regular Political Action Committees (PACs) are separated into two different types: connected and non-connected. Corporations can sponsor the operation of PACs, such as fundraising, but not contribute directly from the corporate treasury for PAC funds. The connected PACs must be connected to a corporation, union, or association, and can only raise up to \$5,000 per person, from members of the organization (employees and union members). Nonconnected PACs can solicit the public, also with the \$5,000 contribution limit, but must fund their own operation from donations. While they can make independent expenditures, they can also contribute up to \$5,000 towards candidates and \$15,000 to any political party<sup>11</sup>.

Super Political Action Committees (Super PACs) are a relatively novel phenomenon that allows donors, individual and organization, to donate unlimited amounts of money and use that money to advocate for and against candidates. The only requirement is that they cannot cooperate and directly work with political candidates and their respective candidate PACs. Those PACs are required to disclose their donors either every month or every 6 months on non-election years and monthly on election years. Examples include Lincoln Project and Club for Growth.

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<sup>10</sup> <https://www.opensecrets.org/industries/indus.php?ind=Q16&cycle=2020>

<sup>11</sup> <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>

### What money?

There are multiple types of “money” used to fund political campaigns. For the purposes of this debate, they will be classified into three types: hard, soft and dark money.

Hard money refers to direct contribution to a candidate. These are direct contributions to a candidate’s committee, and they have the most stringent regulations because these contributions have the strongest connections to personal and corporate interests and therefore the strongest potential for abuse.

Soft money refers to contributions towards parties and independent expenditures by individuals and corporations - practically any expenditures that are not directly linkable to a candidate. Soft money can also include funding get-out-the-vote campaigns in areas that are likely to support certain candidates. They still have significant scrutiny, however there are fewer rules because every dollar of soft money has more limited influence. However, large amounts of soft money would amount to measurable, significant fundraising pressure to candidates.

Dark election money, or spending by nonprofits, unions and trade associations with undisclosed donors, became a prominent phenomenon only in the last two decades. In 2020, over \$1B dark money was raised and spent. These are distinct from Super PACs that their spending cannot comprise a majority of their spending; however, they can raise and spend (both politically as long as there is enough non-politically) unlimited amounts of money. The undisclosed donors, which give the “dark” part of the dark money, can range anywhere from wealthy individuals to foreign governments and interest groups. Those dark money groups can and have run increasingly obscene political attack ads with little consequence as the organization itself is a shell. For example, the National Rifle Association (NRA) has been alleged to take Russian funding to spend on political candidates<sup>12</sup>.

### Data Trends: Where is the Money Spent, and How Much?

Unsurprisingly, most of the money spent is on competitive House and Senate races and on the big-ticket Presidential campaigns. Georgia, Maine, North Carolina, Montana, and Iowa each saw over \$100M in the wrestles for their competitive Senate seats in the 2020 election<sup>13</sup>. This trend of ever increasing campaign expenditures seems to have become the norm over the past few election cycles. Total federal spending jumped from about \$6.5 billion for the 2016

<sup>12</sup> <https://www.brennancenter.org/our-work/analysis-opinion/insidious-foreign-dark-money-threat>

<sup>13</sup> <https://www.opensecrets.org/outsidespending/summ.php?cycle=2020&disp=R&pty=A&type=A>

election cycle to \$14.4 billion for 2020, with the presidential race between Joe Biden and Donald Trump spending a combined \$5.7 billion<sup>14</sup>.

2020 has proved to be a landmark year for campaign spending. Nine out of the ten most expensive senate races occurred in the 2020 election cycle. Democrats outspent Republicans by about \$3 billion, and while a significant portion of the money raised came from a large increase in small donors, both parties still saw the largest portion of their spending come from outside expenditures (like super PACs). The two top super PACs by spending, the Senate Leadership Fund for Republicans and the Senate Majority PAC for Democrats, spent \$294 million and \$230 million respectively, when before no one PAC spent more than \$200 million in one election cycle.

While the large spending increase in 2020 was partially driven by increased enthusiasm by both parties, it nonetheless indicates how current campaign finance laws don't encourage this trend of ever growing spending from stopping any time soon. Transparency of outside expenditures has also decreased since 2016; full disclosure of outside spending has dropped from 70% in 2016 to 30% in 2020<sup>15</sup>, making it more clear that current laws aren't doing much to alleviate concerns about "dark money."

### Public Perception

The reason campaign finance warrants legislative attention is mainly due to public dissatisfaction of how it's currently handled, as well as public confusion on how it operates. According to a Gallup poll in 2019, only 20% of Americans surveyed were OK with how the US handled campaign finance<sup>16</sup>; according to a 2018 Pew Research study, 77% thought there should be limits on spending for individuals and groups, while 65% believed new laws could be written that could be effective in reducing the influence of money in politics<sup>17</sup>.

What's clear from this data and other surveys is that there is a significant mandate from the public to reform, or at least reduce the influence of money in elections. From the same Pew Research survey, 75% thought it was important that big donors did not have more influence on

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<sup>14</sup> <https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/>

<sup>15</sup> <https://www.opensecrets.org/news/2020/10/cost-of-2020-election-14billion-update/>

<sup>16</sup> <https://www.cnn.com/2019/04/04/politics/campaign-finance-polling/index.html>

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<https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>

elected officials than other citizens. This sentiment remains fairly consistent across party lines, however, Republicans are more likely to say that situation is not our current political reality, though a majority still say otherwise. Therefore, a majority of both Republicans and Democrats believe that large donors have significant influence over officials, and that our current campaign finance laws don't do enough to regulate them.

Public focus and pressure on campaign finance has not been consistent because the public itself has limited knowledge on this topic. In a 2015 AP-NORC poll, “53% of Americans said they know only a little or nothing at all about the rules governing the financing of campaigns and only 13% said they know a great deal or quite a bit.”<sup>18</sup> Ultimately, constituents rely on their representatives to find a solution for their general appeals, meaning they entrust representatives with drafting legislation according to their own personal sensibilities. In the context of this committee, while there is significant public pressure to reduce the influence of money in campaign finance, the solution is primarily up to the discretion of each delegate and each delegate's party.

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<sup>18</sup> <https://www.cnn.com/2019/04/04/politics/campaign-finance-polling/index.html>

# THE FEDERAL ELECTION COMMISSION

The main regulating apparatus for campaign finance is the Federal Election Commission (FEC), whose responsibilities can be broken down into three key sections:

1. Public disclosure of funds raised and spent to influence federal elections
2. Restrictions on contributions and expenditures made to influence federal elections
3. The public financing of presidential campaigns<sup>19</sup>

In short, the FEC both monitors and enforces the transparency and legality of campaign finance, from when the money leaves the donors hands to when it enters the pockets of campaign spenders. The FEC itself is composed of six commissioners appointed by the president (and approved by the Senate), who each serve six year terms, and from which only 3 can be from the same political party. The commission interprets and enforces campaign finance through statutes defined under Title 52, Subtitle III and Title 26, Subtitle H, which are conveniently compiled on the FEC website (in “Statutes” under the legal resources tab)<sup>20</sup>. These statutes contain all federal laws that can be altered or built upon by the Senate; state laws or regulations pertaining to states themselves are outside the constitutional limits of the Senate as a federal institution, though one way to circumvent this is to establish national guidelines and tie federal funding with it. This should give you an idea of what powers the Senate has, as well as an understanding of current laws. Having this available during committee would be useful for preventing redundancy and for reference to justify your own laws during debate.

The FEC also provides comprehensive guidelines on their website for all types of individuals and organizations looking to understand how regulations apply to them, including candidates and committees<sup>21</sup>. These guides detail specific procedures for reporting, receiving, and giving money to campaigns, which help to give a very deep insight into how campaign finance law is actually enforced. This is an excellent resource to use if you’re curious about the exact parameters individuals, corporations, and political action committees are allowed to operate within, or if you need help understanding how exactly a federal agency might go about enacting federal laws.

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<sup>19</sup> <https://www.fec.gov/about/mission-and-history/>

<sup>20</sup> <https://www.fec.gov/data/legal/statutes/>

<sup>21</sup> <https://www.fec.gov/help-candidates-and-committees/>

The website also contains an exhaustive list of finance data you can use to back up your claims and figure out where money is being moved around.<sup>22</sup> They also have legal resources to understand the constitutionality of current campaign finance laws, as well as past attempts that were struck down by the Supreme Court. It also details specific enforcement tools they have at their disposal, which can be useful if your aim is to increase the enforcement power of the FEC. All in all, the FEC provides a wealth of material that is used to guide actual campaigns, thus once you have gotten a grasp of how campaign finance generally works in the U.S., you can use their resources as research tools to build your knowledge on the issue.

### The First Amendment and Campaign Finance

Besides the current, enacted laws, historical legal challenges to campaign finance regulation are an important context in understanding current legislative challenges. Relationships between money and speech underpins constitutionality of campaign finance legislation. *Buckley v. Valeo* established that most limitations on expenditures by candidates and their committees are unconstitutional because it directly restrains the quantity of political speech, which violates the First Amendment. However, requiring the disclosure and record keeping of those expenditures does not hamper political speech significantly, since it does not inherently limit the amount of expenditures, which is why it was deemed constitutional. They also upheld the constitutionality of restrictions on contributions, since they deemed that the concern of corruption was an overriding governmental concern that justified its infringement on the First Amendment. Thus, the Court introduces this thin, often blurry line between a sufficient governmental concern and the protection of free speech through the use of money. What's clear, however, is that money is inherently an expression of political speech, since the use of money to facilitate that speech is directly correlated with how that speech is exposed to the public.

The consequences of this decision come 34 years later in the landmark case *Citizens United v. FEC*. Though the case originally dealt with a specific film, the Court decided to broaden the scope of the case to consider restrictions on corporate expenditure because they believed political speech was at risk. The Court held that the First Amendment "prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech," thus limiting expenditures based on wealth was not constitutional given the previous decision in *Buckley v. Valeo* about limits on expenditures. They found governmental interest not sufficient enough to override these limitations on political speech, which, in turn,

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<sup>22</sup> <https://www.fec.gov/data/>

opened the doorway for “big money” interests to create super PACS that maneuver around contribution restrictions as they are not directly affiliated with candidates. Thus, since they are merely expressing their political beliefs through these organizations, they are protected under the First Amendment to spend as much as they want.

Discretion should be exercised when interpreting Supreme Court decisions, their opinions, and summaries of their opinions. For example, Supreme Court justices often have opposing viewpoints on regulation and the role of the federal government. All perspectives of a decision - majority, concurring, and dissenting - should be considered to understand the diverse perspectives and approaches to the complex topic of campaign finance. Delegates are encouraged to point out the limitations of Supreme Court decisions, whether over their opinions or over campaign finance topics that have not been argued and decided at the Supreme Court. However, when passing legislation, Supreme Court decisions can still stand as a useful, powerful guide in predicting which legislation is palatable with the Constitution and with public interests and which ones may be struck down again.

## POSSIBLE SOLUTIONS

Any new campaign finance regulation must be built upon existing legislation and also observe the rulings of the Supreme Court. Supreme Court rulings, by the US Constitution, can only be overturned either by later Supreme Court rulings, which the Congress does not have any control over, or by Constitutional amendments. For Congress to pass a Constitutional amendment, 2/3rds of both the House and the Senate must sign on to a joint resolution, which doesn't need to be signed by the president<sup>23</sup>.

The central issue of contention between parties seems to be how to increase the enforcement power of the FEC without imparting too much power to the president or to the federal government, which Republicans fear may be used for partisan purposes. Other solutions revolve around increasing the transparency of dark money and heavier scrutiny of coordination between congressmen and super PACs. Democrats lean heavily towards reforming the FEC in line with other federal agencies, giving the FEC more enforcement power, and improving gridlock on FEC commission votes, which are usually locked between party lines. Republicans are primarily concerned with the encroachment of partisan power struggles into the FEC<sup>24</sup>, and thus their solutions would likely not significantly change the structure of the FEC or would work towards depoliticizing it even further.

Here are a couple recent bills that included campaign finance reform:

- H.R.1: For the People Act of 2021<sup>25</sup>
  - House bill that passed along party lines; also includes voting rights reform, among other things.
- H.R.5746: Freedom to Vote: John R. Lewis Act<sup>26</sup>
  - Senate-amended bill that was blocked by Senate Republicans.

Looking at what the Senate majority and minority leaders say about campaign finance is also a good way to gauge what sort of solutions your party is willing to support.

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<sup>23</sup> <https://www.archives.gov/federal-register/constitution>

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<https://www.mcconnell.senate.gov/public/index.cfm/2019/3/democrat-politician-protection-act-would-yield-a-partisan-takeover-of-the-fec>

<sup>25</sup> <https://www.congress.gov/bill/117th-congress/house-bill/1/text>

<sup>26</sup> <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-117HR5746EAS-RCP117-28.pdf>

Ultimately, there are not many “easy” solutions. Campaign finance laws are notoriously hard to pass because of the complicated webs of interests they entangle. However, your solutions can range from legislative bills to constitutional amendments, although delegates must be mindful that the latter will entail fundamental changes to the American political system, and exercise great discretion in its wording and implementation. The fundamental nature of constitutional amendments is a reason that three quarters of state legislatures are required to ratify a constitutional amendment.

## **BLOC POSITIONS**

Campaign finance for incumbent Members of Congress are a double-edged sword. On one hand, the Members of Congress would want fewer limits on campaign finance so that their respective candidate committees, party committees, and outside Super PACs can spend as much as they need to broadcast positive information about themselves or negative information about their opponents. Incumbents can also use their name-recognition advantage to raise significantly more funds than their less well-known opponents.

On the other hand, the same incumbents would be forever locked against their potential opponents, in both primaries and in general elections, in fundraising matches, especially if the said incumbent is a polarizing figure or deeply unpopular. An incumbent only has a limited amount of money to raise and allocate between primaries and general elections while there are countless challenges from their opponents.

Mitch McConnell, the former Senate Majority Leader and current Senate Minority Leader, has long opposed campaign finance reforms and has led filibusters against past campaign financing legislation, including the McCain-Feingold Act. Mitch McConnell supports as little restriction as possible on campaign financing, as he has been a major beneficiary of loose campaign finance restrictions, both for himself and for the Republican party.

Rank-and-file Republicans also largely oppose restrictions on campaign finances. Few of the Republican senators that voted in favor of BCRA in 2002 are still in the Senate today; however, many opponents, such as Chuck Grassley (R-IA) and Richard Shelby (R-AL) are still in Congress.

Democrats, however, have often been more keen on regulating campaign finance. Bernie Sanders has been a vocal supporter of campaign finance reforms. Bernie Sanders relied on small donors for both his 2016 and 2020 Democratic presidential primaries.

### Representing your position

As Senators, you are expected to advocate in favor of your stance on campaign finance.

Your stance depends on:

1. Your past voting records,
2. Your past statements,
3. Your constituents, and
4. Your party's positions

## **DISCUSSION QUESTIONS**

1. For local, regional and state offices, should there be limitations on who can donate to political candidates' campaigns and finance political information distribution on a candidate? Should that campaign finance rights be granted only to the voters who are eligible to vote for that particular candidate?
2. Should the federal government use levers other than the legal system, such as placing restrictions on political expenditure on recipients of federal funding/subsidies or recipients of federal contracts?
3. Should there be timeframe limits on when candidates can raise and spend money?
4. Legal challenges to campaign finances will occur. How can these First Amendment considerations balance with the restrictions on campaign finance?
5. Political expenditure is not just about distribution of information (regarding candidates). For example, committees have been spending money on supercomputing to draw district lines to maximize party advantages<sup>27</sup>. Should there be other restrictions on how political committees can spend money?
6. The Internet and big data has allowed political parties and committees to invest resources to understand and take advantage of voters. Can arguments in favor of privacy be made to restrict the information that parties and political committees gain access to of their voters?

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<sup>27</sup> <https://www.theatlantic.com/politics/archive/2017/10/gerrymandering-technology-redmap-2020/543888/>