



POV: Meaningful Campaign Finance Reform: Don't Get Your Hopes Up

Why? Candidate motives, separation of powers, the
Supreme Court



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By [Maxwell Palmer](#)

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Over the last few months, campaign finance and the role of big money in politics have emerged as significant issues in both presidential primary contests. The influence of wealthy individuals and corporations is at the core of Senator Bernie Sanders' (D-Vt.) campaign for the Democratic nomination for president. Sanders has attacked Secretary of State Hillary Clinton for raising campaign donations from Wall Street and receiving support from big-money Super PACs. Similarly, Donald Trump has argued that his ability to self-finance his campaign will make him a more independent and effective leader than his rivals for the Republican presidential nomination because he will not be beholden to special interests.

Throughout the campaign, candidates in both parties have proposed changes in the campaign finance system. Both [Clinton](#) and [Sanders](#) support a broad overhaul of the system to reduce the influence of big money. In particular, they have called for overturning the Supreme Court's *Citizens United v. Federal Election Commission* decision, which opened the doors to unlimited independent expenditures by nonprofits and corporations. Republican candidates have argued for reforms as well. Trump has described campaign finance as a broken system, [stating in a debate](#), "Super PACs are a disaster. They're a scam. They cause dishonesty. And you better get rid of them..." He has also highlighted the potential corruption of our campaign contribution system by discussing his own history of donating to candidates in exchange for favors in the future.

Attacking the campaign finance system is probably an effective strategy for outsider candidates. The system is very unpopular, and the amount of money in our elections (both raised by candidates and independent expenditures) raises questions about the power and influence of wealthy individuals and special interest groups over elections and then over policy. [Recent polls](#) show that a majority of voters dislike the current method of financing elections and believe money has too much influence in campaigns. However, we should not expect to see any real policy change on the funding of elections and the role of big money in politics, regardless of the presidential nominees and the eventual election winner. Candidates may call for policy change, but we should be skeptical of any change on this issue for several reasons, including candidate motives, separation of powers, and the Supreme Court.

First, the preferences of members of Congress are a significant impediment to campaign finance reform. While some candidates may support campaign finance reform (and many dislike the

amount of time they spend fundraising for their next campaign), the vast majority of congressional incumbents have proven to be successful fundraisers and benefit from the current system over a public funding system or other reforms. Incumbents may worry that reforms that reduce their financial incumbency advantage will reduce their electoral success in the future. Campaign finance reform is simply not in their electoral interest, and therefore members of Congress tend to focus instead on other issues.

Second, even if candidates who support campaign finance reform are elected, there are many institutional constraints to reform. Our legislative process requires agreement among the House, the Senate, and the president for policy to change. When they cannot agree, legislative gridlock results, as we have seen in many policy areas over the last five years. Campaign finance reform is almost certainly going to fall victim to legislative gridlock. After the 2016 elections, Republicans are extremely likely to remain in the majority in the House. The Senate is more competitive, but still likely to have a Republican majority. If a Democrat is elected president, they may push for campaign finance reform, but like many of President Obama's policy proposals, it will not be considered by a Republican-controlled House of Representatives.

Third, and most important, the Supreme Court is unlikely to uphold any significant overhaul of the campaign finance system that restricts the ability of individuals or groups to participate in the political process. Any realistic proposal for campaign finance reform that restricted independent expenditures would likely be struck down by the same five-justice majority that ruled in *Citizens United v. FEC* that the government cannot restrict independent expenditures by nonprofit groups.

Given that the Supreme Court is a major roadblock to campaign finance reform, both Clinton and Sanders have declared that they

will appoint only Supreme Court justices who would vote to overturn *Citizens United*. They are unlikely to have such an opportunity. The justices most likely to retire during a Democratic administration are Ruth Bader Ginsburg and Stephen Breyer (Hon.'95), who both opposed the decision. Replacing them would not shift the balance of the court on this issue. The five justices who voted for the decision are unlikely to voluntarily retire in the next four years if a Democrat were to win.

With a majority on the Supreme Court in opposition to restricting campaign expenditures, any major reform would have to bypass the court through a constitutional amendment. Many Democrats, including Obama, Clinton, and Sanders, have called for a constitutional amendment to overturn *Citizens United* and restrict campaign spending. Such an amendment is extremely unlikely to pass; it would require a two-thirds majority in both houses of Congress, and then ratification by 38 states. Given the opposition by Republicans to any such amendment, the proposed amendment would not succeed in either stage.

Between electoral motivations, separation of powers, and the courts, it's doubtful we'll see real policy change on campaign finance. This may be a good issue for Sanders to use to attack Clinton, and potentially good for Trump to show that he is different from the rest of the Republican candidates. But it is a campaign issue, not a policy issue. We should not anticipate meaningful policy change, no matter how much it is discussed by the presidential candidates over the next several months.

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