



CITIZEN ADVOCACY CENTER

What Role Does Money Play in Politics?

A Moderated Discussion

LESSON PLAN AND ACTIVITIES

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Funding for lesson plans was provided to the Citizen Advocacy Center by the McCormick Foundation.

Campaign Finance: What Role Does Money Play In Politics? A Moderated Discussion

Lesson Plan and Activities

Grade Level: 9, 10, 11, 12

Subject(s):

- Social Studies: United States Government, State Government, Local Government; and

Duration: 1-2 class sessions

Description: This lesson provides an overview of the U.S. election finance process and the values it reflects through an active class discussion.

Goals:

Illinois Learning Standards

A. Social Science: 14C, 14D; 16A, 16B; 18B.

Objectives:

1. Understand the idea of free speech as it relates to the campaign finance system.
2. Understand the difference between campaign contributions and campaign expenditures.
3. Discuss various dualities between values as related to the campaign finance system: speaker vs. listener, liberty vs. equality, corporation vs. person.
4. Discuss the recent Supreme Court decision in *Citizens United v. Federal Election Commission*.

Materials:

1. Blackboard and chalk or whiteboard and marker

Instruction and Activities:

Ask students, “How many of you have ever thought about campaign finance?”

- Likely none will raise their hands.

Ask, “Why do you think we are talking about this topic today?”

- Elicit responses.

Ask, “What level of exposure have you had to the First Amendment? To its free speech clause?”

- Elicit responses.
- Write on the board the words that make up our First Amendment free speech rights: Congress shall make no law. . .abridging the freedom of speech.”

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Ask what the words in the free speech clause mean to the students.

- Elicit responses.

Ask if the freedom of speech is absolute.

- Elicit responses
- Remind students that the Supreme court of the United States defines the contours of free speech by deciding if Congress' laws regulating speech are constitutional or not.
- Give examples such as one cannot shout fire in a movie theater if there is not really a fire, because it could cause a stampede.
- Remind students that one CAN engage in the prohibited speech, but then one suffers the consequences.
- So, no, freedom of speech is not absolute.
- Remind students that political speech is the most protected kind of speech.

Ask, "What do you think about this: Is money speech? Does money equal speech?"

- Elicit responses. Students will likely bring up types of commercial speech.

Ask, "How does money equal speech in a political campaign?"

- Students may mention that their household receives phone calls soliciting campaign or party contributions, or something similar, if it is election season.
- Help students brainstorm the many costs of campaigning: Ask students if they have received political literature in the mail or seen any campaign ads on TV. Have any attended a political rally?
- Cite the cost of recent campaigns:
 - President Obama's 2008 campaign cost about \$750 million
 - Total cost of 2008 federal election: \$5.3 billion.
 - Average cost of winning a seat in the House of Representatives: \$1.1 million.
 - Average cost of winning a Senate seat: \$6.5 million.

Ask, "How does money NOT equal speech in the context of political campaigns?"

- Money is at best indirectly related to speech. "Money is speech" is a metaphor.

How about when one is contributing money to someone else's campaign? Whose speech are we really talking about?"

- The candidate or party creates the speech. The contributor is the listener of that speech.
- Write "Listener vs. Speaker" on the board. This is the first kind of tension or duality in thinking about our values.
- "Whose rights are we protecting?" This tension reveals itself in the debate about campaign contributions versus campaign expenditures.

"The 'money equals speech' metaphor might be confusing in the debate about free speech. Why is the regulation of money a free speech issue?"

- Let's look at an analogy. A law restricting people from flying planes to give speeches would be a speech restriction. Flying, of course, is not speech, but giving a speech is speech, and burdening such speech in any way is a speech restriction.
- As Justice Breyer has pointed out, "A decision to contribute money to a campaign is a matter of First Amendment concern – not because money is speech (it is not) but because it enables speech."

Ask, "Do you think that our government should regulate campaign contributions? Why or why not?"

- Elicit responses.
- Invariably one student will say that people should be able to spend their money any way they want to.
 - Write the word "Liberty" on the board.
- Invariably another student will say that it is not fair for people with lots of money to control campaigns.
 - Write the word, "Equality" on the board.

State, "Here is a glaring tension in the bedrock principles on which our nation was founded in the context of campaign finance: the tension between liberty and equality."

- Here is another tension between values that emerges in our discussion of campaign finance: While we have sociological reasons to justify our positions, the Supreme Court uses legal reasoning to reach its decisions.
- Equality: Limiting the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections is not considered to be a compelling reason for regulating campaign contributions, according to the Supreme Court (legal reasoning).
 - But, remind students that the principle of "one person, one vote" (also legal reasoning) is based upon the idea of equal participation in political decisions. Rhetorical question: why is this not a compelling reason to regulate campaign contributions if it props up our system of voting?
 - Sociological reasoning for equality: leveling the playing field. But legally, the free speech clause does not say anything about how much speech each person is allowed or entitled to have.
- Remind students that the Supreme Court deems the compelling rationale for limiting direct contributions to political candidates by individuals and corporations to be actual or potential corruption.

Ask, "What is an overarching reason to pay attention to campaign financing? What do we desire as a nation?"

- A healthy campaign system. Write "a healthy campaign system" on the board.

Ask, "At what expense do we get that healthy campaign system?"

- Regulation of speech. Write "free speech" on the board.

State, “Therein lies another tension: two important values in direct conflict: freedom of speech and our desire for healthy campaigns.”

Distinguish for students the difference between “campaign contributions” and “campaign expenditures.” Explain that in 1976 the Supreme Court opined that regulating the former is constitutional, but regulating the latter is not. Recall the listener versus speaker tension.

- In federal elections, individuals may give \$2,500 to each candidate or candidate committee per election.
- There is no corresponding federal dollar limit for expenditures by political campaigns.

Ask, “Why do you think that might be?”

- At least one student should bring up the corruption issue as related to campaign contributions.
- Remind students that the Supreme Court has used exactly that rationale, actual or feared corruption, for justifying the constitutionality of regulating campaign contributions by individuals, corporations, and unions to campaigns. There is no similarly applicable rationale for campaign expenditures.
- Point out (write figures on the board)
 - In 2008, the candidate who spent the most money in a race one
 - 93% of House races
 - 93% of Senate races
 - The White House
 - In 2008, out of 49 self-funding, wealthy candidates, only 24 made it to the general election, only 7 were elected, and all of them gave their campaigns at least \$500,000.
 - These numbers indicate that spending the most money is not the best single indicator of who will win, but rather suggests that having a broader contribution base is important as well.

Ask if students see any problem with worrying about the appearance of corruption as opposed to having evidence of actual corruption to deal with.

- Hopefully a student will pick up on the lack of evidence to support any “appearance of corruption” concerns.
- Point out that some Supreme Court Justices also seem to question the “appearance of corruption” as a compelling reason to regulate campaign contributions. They would rather that only quid pro quo corruption should be regulated, and that would be through criminal prosecution after the fact.

Ask, “What is another way that Congress could keep track of corruption? That individuals could try to keep track of corruption?”

A student should pick up on disclosure and reporting requirements: Federal election laws require candidate committees, party committees and PAC’s to file periodic reports disclosing the money they raise and spend. Candidates must identify, for example, all PAC’s and party committees that give them contributions, and they must identify individuals who give them more than \$200

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in an election cycle. Additionally, they must disclose expenditures exceeding \$200 per election cycle to any individual or vendor.

Write “corporations” on the board. “Let’s segue into a discussion about corporations. How are corporations different from individuals?”

- Invariably a student should point out that a corporation is made up of individuals.
- Explain that when the Constitution was written only six (6) corporations had “national charters.” The founders were likely not particularly concerned with corporate power. By the 1900s, corporate status was conferred by the state. A corporation may form “for any lawful purpose.” The corporate form confers the benefit of limited liability on corporate officers, directors, and shareholders. It protects individuals’ assets. The corporate form allows a corporation to “live” forever, beyond the physical years of its initial officers, directors and shareholders. It allows a corporation to amass large amounts of wealth.
- Write “individuals” on the board. Explain that for legal purposes, corporations have been equated to “persons.”
 - Some argue that logically, as a matter of consistent reasoning, corporations should be able to enjoy the same free speech rights as individuals.
- Point out that this is another dichotomy or schism in campaign finance law that has caused rifts in thinking.
- Elicit responses. Ask students what they think.

Write “*Citizens United v. FEC*” on the board. Explain that the Supreme Court of the United States famously ruled in this 2010 case that corporations have the same free speech rights as individuals when it comes to contributing money directly to political candidates.

- Corporations used to have restrictions put upon them when it came to campaign expenditures, such that they could not expend money related to a political issue out of their general treasury funds. Rather, they had to use segregated funds, funds that were kept separate from their general treasury.
- Write “Political Action Committee” on the board. A political action committee, or PAC, is effectively a segregated fund. PACs defined: organizations established by businesses, labor unions, and interest groups to channel financial contributions into political campaigns.
- Having a separate entity, a PAC, facilitated disclosure requirements.

FYI:

- *Citizens United v. FEC* involved the extent to which a 90-minute video about then Presidential candidate Hillary Clinton may have violated federal campaign finance laws due to the source of funding for production of the video and the timing of the airing of the video on cable broadcast media. The Supreme Court’s ruling on this case reversed course on over 100 years of federal campaign finance laws regulating corporate campaign contributions.
- The core issue of the case revolved around one section of the Bipartisan Campaign Reform Act (BCRA), a law that closed loopholes in federal campaign finance. The section at issue

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prohibited corporations and unions from funding “electioneering communications” from general treasury funds.

- BCRA defines “electioneering communications” as “any broadcast, cable, or satellite communication which . . . refers to a clearly identified candidate for Federal office “that is made within 60 days before a general election or 30 days before a primary election.
- The 90-minute video technically met the definition of electioneering communications. However, *Citizens United* argued that when Congress defined “electioneering communication” it intended to target short, punchy and arguably negative “issue” ads that catch television viewers unaware. In this case, the video was to be shown on cable by video-on-demand. The Supreme Court could have narrowly decided this case by determining that the opt-in nature of the video-on-demand is not included in the definition of “electioneering communication.” Instead, the Court used the opportunity of this case to issue a broad decision, declaring unconstitutional government regulation (outside of disclosure requirements) of independent expenditures by corporations in support of or opposition to particular political issues or candidates.
- As did many courts before it, the Supreme Court decided to preserve the “bright line rule” that our First Amendment jurisprudence abides by. Rather than carve exceptions from the rule, the Supreme Court decided to overrule previous cases that allowed for a regulatory scheme with room for exceptions, in favor of the bright line rule with no exceptions needed.