Does the U.S. Campaign Finance System Favor Republicans?

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Abstract:

There is a common belief that the pro-regulatory approach of Democrats, makes them more determined in the fight against big money in campaign elections, whereas Republicans, supporting recent Supreme Court decisions in Citizens United v. F.E.C. and McCutcheon v. F.E.C., benefit from the system more than their political counterparts. The aim of the article is to analyze the real character of the U.S. campaign finance regulations, both from legislative and judicial perspective, and to determine which political party benefits from the system: Republican or Democratic? By underlining the Buckley rule that 'money is speech' the Author suggests that campaign contributions and spending are deeply rooted in the character of American political system determining the political future of candidates of both political parties. The article refers to election cycles since 1970s, but it mainly focuses on recent election cycles, including the 2016 presidential election.

Key words:
campaign finance, Republicans and Democrats, U.S. politics and law

Introduction

The system of campaign finance in the United States has been a subject of ongoing criticism, and many analysts argue that the current regulations favor the Republican candidates in federal elections, especially because of the uncontrolled flow of outside money (Gerken 2014; Smith, Powell 2014). Some argue that growing role of election money leads to ideological polarization of the parties (La Raja, Schaffner 2015), others, that the efforts to reform the system and diminish the impact of money in campaigns were unsuccessful (Samples 2008). The fact is that the dispute between Democrats and Republicans over the election money was ignited by the U.S. Supreme Court (SCOTUS) decision in *Buckley v. Valeo*, which reduced the discussion about campaign finance to the clash of leading democratic values: equal representation and freedom of speech. According to the main argument raised by the *Buckley* majority, campaign contributions were a form of political speech which was granted First Amendment protection (424 U.S. 1, 1976). From that moment on the discussion about the proper scope of regulations of campaign contributions and expenditures became a dispute over the character of American democracy (Laidler, Turek 2016). The fact is, that even if the reforms of 1970s were aimed at limiting the amount of money in federal election campaigns, the *Buckley* precedent, confirmed in several subsequent SCOTUS decisions, hassled to the increase of political money, determining the final outcome of the races to the highest federal offices (Laidler, Turek 2016; Black 2015; Bell 2015; Mutch 2014; Abraham 2010; Hohenstein 2007). Commentators and researchers often argue that the system, redefined by recent SCOTUS decisions promotes Republican candidates, who are more successful in obtaining financial support from individual and corporate donations, as well as contributions from outside groups such as SuperPACs (Jones 2016; Gerken 2014; Oświecimski 2011).

The aim of the article is to analyze the real character of the U.S. campaign finance regulations, and to determine which political party benefits from the system: Republican or Democratic? The research is based on the analysis of 1. the data regarding the amount of money raised and spent in federal election campaigns, 2. the type of contributing subjects, and their political/ideological affiliation, and, 3. legislative acts and judicial decisions concerning campaign finance regulations. Despite necessary references to the history of federal election campaigns, the Author mainly focuses on recent election cycles, including the 2015-16 cycle. All the important data on campaign contributions and spending were based on the information from the Federal Election Commission (FEC), as well as the Center for Responsive Politics (CRP), and the Campaign Finance Institute (CFI).

Money in federal election campaigns

There is a popular cartoon showing a lawyer behind his desk discussing case strategy with his client and saying: ‘how much justice can you afford?’(Handlesman). Similar cartoon could be drawn to present the real character of election campaigns and their final outcome, however, the phrase would have to be replaced with 'how many electoral wins can you afford?'. There is no other certain key in election campaigns opening the door to success as money. Of course, money itself does not win the election, but it is impossible to win in without a considerable financial support. The impact of dollars on American electoral process has always been visible, and especially since the beginning of the 20th century it has become a huge problem to control the flow of money in federal and state elections (Corrado 2005: 10-12). The 'money factor' seems crucial for contemporary election campaigns, forcing the candidates to initiate fundraising activities long before they start their official run for the office, which leads to a feeling that in the U.S. there is a "permanent campaign" (Blumenthal 1982). Money determines the course of the campaign, its language and form. It gives access to more effective campaign tools, and it helps to reach broader audience. And, above all, money becomes a legitimate end to both candidates and donors, who exert an significant influence on the substance of the election campaign.

The figures are shocking. The cost of federal election campaign in recent cycles has been counted not in millions, but billions of dollars spent by congressional and presidential candidates, political parties, political action committees (PACs) and independent interest groups. The data collected by CRP show what follows: 1. the last election cycle was the most expensive in history with expenditures of almost \$6.5 billion; 2. the cost of the last three presidential elections exceeded \$2 billion each; 3. the sum of the money spent during the last ten election cycles equals almost \$40 billion (CRP, *Cost of Election*). It is easy to estimate that the \$ 6.5 billion spent in 2015-16 election campaign means that each eligible American voter donated about \$28, which does not seem much. There are, however, two circumstances, which change that perspective. Firstly, the voter turnout was not very high, as almost 100 million eligible voters did not vote in the recent election (Regan 2016). Secondly, not every American contributes during the campaign, and as a matter of fact, the vast majority of them does not donate a cent. According to available data, only 0.4 percent of Americans made \$200 or higher contributions during the 2011-12 election cycle, and only 0.23 percent made such contributions in the next cycle (Mutch 2016: 6). One should not doubt that these figures would change dramatically in 2015-16 election cycle. Therefore, big money flows into federal election campaigns thanks to the support of a small group of donors, raising a problem of political participation and equal representation. That problem is not new to American democracy.

The uncontrolled flow of money into federal election campaigns forced Congress to initiate legislative process and implement regulations limiting the influence of certain subjects on the electoral process, or imposing restrictions on campaign contributions and spending. The broadest piece of legislation on campaign finance was introduced in the 1970s, with Federal Election Campaign Act of 1971 (FECA) and its 1974, 1976 and 1979 Amendments, regulating the flow of campaign funds, opening the opportunities for public financing of presidential campaigns, and creating a special administrative body, Federal Election Commission (FEC) in order to strengthen disclosure requirements (86 Stat. 3, 1971; 88 Stat. 1263, 1974; 90 Stat. 475, 1976; 93 Stat. 1339, 1980). The constitutionality of some of the FECA provisions was challenged in the courts resulting in the landmark SCOTUS decision in *Buckley v. Valeo* (424 U.S. 1, 1976). Although the Court upheld the majority of regulations, it decided that campaign spending is a form of political speech protected by the First Amendment, therefore spending limits introduced in 1974 FECA Amendments were unconstitutional. One of the phrases used by Justice Potter Stewart in his oral argument in *Buckley*, "money is speech, and speech is money" (Mutch 2014: 148) became the leading argument of the proponents of the concept that financial participation in election campaigns is a form of political speech. That concept became the core justification for Republican politicians and conservative Justices in their interpretation of the regulations imposed by Congress on the campaign finance issues. Starting from the late 1970s, the political money argument has been used to strike down several restrictions set out in FECA and its subsequent legislation, including Bipartisan Campaign Reform Act of 2002 (BCRA). The most controversial decision was made in *Citizens United v. F.E.C.* in which the Court determined unconstitutionality of the provisions restricting electioneering communications of corporations and labor unions. The conservative majority equipped corporations with First Amendment protection enabling them to make political expenditures (558 U.S. 310, 2010).

As a result, the contemporary campaign finance system is full of money, part of which is contributed by organizations and institutions banned from making direct donations to candidates in federal elections. Donations made by these subjects are called 'dark money', as the candidates are not obliged to reveal who contributed the funds used to support the election campaigns, most often by promoting negative electoral communication (Gerken 2014; Weintraub, Tausanovich 2013). In order to fully understand the American electoral process and political system, it is important to determine whether one of the two major parties dominates in collecting and spending huge funds during political campaigns to the highest federal offices.

Political parties

For Europeans it may be a surprise to find out that American political parties are not very active in allocating large sums of money in campaigns of their representatives. It does not mean that the party leaders and committees do not play an important role in election campaign, still they are not among the top contributors. As Robert Mutch argues, “political parties may contribute money to their candidates and make expenditures on their behalf, but party money accounts for only small share of most candidates’ campaign funds” (Mutch 2016: 6-7). Of course Democrats and Republicans have several central institutions responsible for supporting political activities of their candidates in national elections. Every four years, national conventions choose official candidates of the party in presidential election, thus ending the primary stage and opening the general election phase, and they also create party platform determining future political goals of the party (Turek 2013a: 120). Other electoral issues are managed by party national committees which coordinate the support for candidates to certain offices, lacking direct authority over the candidates and their campaigns. The Democratic National Committee (DNC) and Republican National Committee (RNC) are engaged in building local party structures and supporting grass-root activities which lead to collection of campaign funds and planning of campaign strategies (Maisel 1991: 251-258, 943-951).

On the other hand, there are congressional campaign committees, controlling the political aspects of elections to the House of Representatives (Democratic Congressional Campaign Committee, DCCC, and National Republican Congressional Committee, NRCC), and to the Senate (Democratic Senatorial Campaign Committee, DSCC, and National Republican Senatorial Committee, NRSC) (Janda, Berry, Goldman 1995: 278). These institutions are responsible for supporting electoral activities of party candidates, but their direct contributions do not constitute a large amount of the funds collected by the candidates. Analysis of the activities undertaken by congressional committees proves that before the general election, they are involved in the independent expenditures for candidates, thus strengthening the political message supporting or criticizing concrete candidates (Maisel 1991: 249-250, 941-942).

Political parties have never been primary campaign contributors in contrary to private donations which were the main source of financial support coordinated with the candidates, constituting between 50 percent in early 1990s to about 75 percent in 2009-10 election cycle of all contributions collected by the candidates to the House of Representatives, and between more than 62 percent in 2000 to over 80 percent in 2013-14 election cycle of money collected by candidates in senatorial elections (Ornstein et. al. 2015). The same data show very low financial support of political parties for the candidates in direct contributions, ranging from 1 percent to 8 percent in elections to the House and 2 percent to 12 percent in Senate elections. Such figures mean, on the one hand, limited impact of political parties on campaign contributions of congressional candidates, and, on the other, a possibility that party establishment uses different forms of financial support for the campaigns of their candidates, such as indirect donations, called independent expenditures, which are not coordinated with the candidate.

Historically the problem of independent expenditures was a legitimate way to avoid the limitations set by 1970s campaign finance reform imposed by Congress. The necessity to limit the amount of contributions for candidates in federal elections, and the duty to report all donations over $200 to FEC forced the Republican and Democratic Party to seek other ways of financial support to their candidates. That is how 'soft money' came into play. These were the funds collected mostly by state party committees in order to support the political infrastructure of the two main parties. The money donated for enhancing the quality of administrative and office activities of the party, as well as increasing citizens' electoral awareness by registering voters or getting them to the polls, were used to support candidates for federal offices (Turek 2013b: 176-185). As Anthony Corrado argues, the main problem was that most of the money was contributed by corporations and labor unions which could not make official donations for election campaigns (Corrado 2005: 32). In such a way political parties became dominating actors in the process of financing campaigns, forcing legislators to impose a ban on the soft money contributions, which eventually happened after the implementation of BCRA (116 Stat. 81, 2002).

The analysis of the amount of money spent by political parties through soft money contributions shows their significant impact on the substance of the late 1990s federal campaigns (Mann 2003; Magleby, Squires 2004). The half billion dollars spent during the 2001-02 election cycle became the largest up-to-date contribution made by political parties through independent expenditures. The decrease of financial influence of political parties on presidential and congressional campaigns became visible after 2002 (Toner, Trainer 2015: 119), however, RNC and DNC are still playing important role in collecting funds in order to support their candidates in federal elections (Garrett, Whitaker 2016: 7-8).

During the last ten election cycles the expenditures of political parties coordinated with politically affiliated candidates are similar for Republicans and Democrats. In the cycles in which national party committees made less coordinated expenditures, they were more active in the sphere of independent contributions. Not surprisingly, it happened during midterm election cycles, when the party did not have to focus on the race to the White House. It is important to acknowledge that among national committees Republicans are more active than Democrats, whereas the latter usually spend more funds through their congressional committees (FEC, *National Political Party*). Such situation may prove bigger determination of the Republican Party leaders to donate more money to their candidates, but it also means more centralized system of contributions made by Republican supporters. Still it does not change the general observation that the funds collected and spent by both parties are similar, therefore, from that perspective, the campaign finance system is not more favorable to Republicans than Democrats.

Individual donors

Contributions from individual donors constitute an important part of all private donations, which are the largest source of contributions to candidates in federal elections. Analyzing congressional and presidential elections, Republican candidates almost always received bigger support from individual donors than their Democratic counterparts, although differences were not substantial (Laidler, Turek 2016). It is important to acknowledge that individual donations may be given directly to the candidates, their committees, or political action committees as hard money, but also to outside groups which make independent expenditures. Sometimes a better result in raising funds from individuals does not mean election to the office, or even a chance to become a candidate of the party in presidential elections. Remarkable is the case of Jeb Bush, who was supported by Republican leaders in the beginning of 2016 presidential election primaries, when he collected most money from individual donors. The problem was that nearly$100 million he raised went through his Super PAC and did not trigger enough support from Republican voters, which forced Bush to suspend the campaign before it really started (Gold 2016).

Among individual donations coordinated with the candidates there are small donations which do not have to be reported to FEC because they do not exceed $200 limit set out in FECA, and large donations which need to be disclosed by the candidates receiving the funding (Malbin 2009). Historically, Republicans were more successful in receiving small donations, but the amount of money raised in that way was rarely a major part of all individual contributions. An exception to that rule could be observed in the last election cycle during which Donald Trump collected numerous small donations which sum made almost 70 percent of the amount of money collected from individual donors (CFI 2017).

Despite Republican domination, there were election cycles during which Democratic candidates collected more money from small donations than Republicans (CRP, *Donor Demographic*). The best example is the 2008 presidential election during which Barack Obama collected $181 million from less than $200 contributions, proving that good public relations and effective strategy may lead to the final success, no matter the party affiliation. Four years later Obama was even more effective raising an unbelievable sum of $219 million from small donations, leaving his Republican counterpart, Mitt Romney, far behind with his $58 million. The Republican dominance in collecting funds from small donors was restored by Donald Trump in 2016 when he raised $239 million in small contributions. It was not only more than Hillary Clinton and Bernie Sanders collected together, but also more than Obama's achievement in 2012 (CFI 2017). Trump's result is especially impressive when one realizes that the majority of the small donations came during the three months of general election, and that as a presidential candidate he did not receive much support from Republican leaders. But even if one agrees with the significance of small contributions, it is obvious that from the perspective of the amount of collected funds, rich donors make a difference. Is it true that, as in the case of small donors, the Republican Party may count on the majority of large contributions?

The analysis of the recent election cycles confirms that individuals give large donations to various candidates of one of the parties. In the 2011-12 cycle Sheldon Adelson contributed $92 million for election campaigns of Republican candidates, three times more than the second largest contributor, businessman Harold Simmons, who also supported conservative politicians. Adelson gave huge donations to Republican presidential candidates, Newt Gingrich, during the primaries, and Mitt Romney, during the primaries and general election (Laidler, Turek 2016: 162). Taking these figures into account it is obvious that during the 2011-12 election cycle top contributors supported mainly Republican candidates, donating four times as much as large donors of Democratic candidates (CRP, *2012 Top Donors*). Although the next election cycle concerned midterm elections, the amount of money funded by rich Americans was close to the sums contributed two years earlier. The top individual donor, the hedge fund manager Thomas Steyer, spent more than $73 million in contributions to liberal candidates, whereas the second-largest donor, Michael Bloomberg, “only” $20 million. This time Democratic politicians were the main beneficiaries of the donations made by rich Americans, exceeding their Republican counterparts almost three times (CRP, *2014 Top Donors*).

Both election cycles proved that top individual contributors did not support only one political party or candidates sharing one ideology, so one should not consider any advantage of Republican politicians in that perspective. Ideological pluralism may also be observed in the recent election cycle, during which the two already mentioned richest donors from 2011-12 and 2013-14 cycles open the list of the largest individual contributors. Thomas Steyer donated about $91 million to Democratic and liberal candidates, whereas Sheldon Adelson supported Republican and conservative politicians with $82.5 million. Analysis of the contribution of the next large donor indicates that the differences in funding of the richest contributors were not as big as in recent election cycles, but it is also clear that Democrats benefited more than Republicans (CRP, *Top Individual Contributors*).

The contention that the richest Americans support Republican candidates in federal elections may be a result of specially organized networks of individuals and institutions financing election campaigns. One of the most effective networks like that was created by the Koch brothers who are responsible for conveying millions of dollars to Republican candidates in every election cycle. The organization led by Charles and David Koch has been supporting conservative and libertarian candidates in U.S. elections since 1980s, but their intensified financial activity may be observed in the last four election cycles (Mann, Corrado 2014). But the same role as the Koch brothers network for Republicans is played by Democracy Alliance in case of Democratic Party. That consortium consists of more than a hundred companies, organizations and individuals sharing liberal views and donating significantly to campaigns of Democratic Party candidates. One of the most active supporter of political activities led by

Democracy Alliance is Thomas Steyer, top contributor to campaigns of Democratic politicians (Restuccia, Vogel 2015). The role of both institutions is similar, and during the election cycles it comes down to collecting money for conservative or liberal candidates, but it is difficult to estimate which organization is more successful, because even if the Koch brothers network is capable of raising more funds than Democracy Alliance, the figures from last election cycle show opposite results. The reason for that was the lack of agreement among the members of the network who they should support during the primaries against Donald Trump (Mutch 2016: 94).

Outside money

Apart from candidate committees, political parties, and individual donors participating openly in the process of campaign funding, but at the same time being subject to certain restrictions and control of the FEC, there are also other subjects having considerable influence on the campaign finance system. They are called outside groups, as they cannot coordinate with the candidates and give them direct contributions, but they can raise unlimited amount of money instead, in order to make independent expenditures (FEC, *Coordinated Communications and Independent Expenditures*). In most cases independent expenditures are aimed to support the candidates by preparing negative attacking ads at their campaign rivals. Therefore, outside money has significant influence on the content of the election campaigns, which could be especially visible in the last election cycle during which outside groups spent most of their funds on negative campaign against Trump or Clinton (CRP, *2016 Outside Spending*). Critics argue that the biggest problem of outside money is that they are raised and spent by subjects officially prevented from making contributions coordinated with candidates.

The issue of corporate money in elections became crucial after the SCOTUS decision in *Citizens United v. F.E.C.*(558 U.S. 310, 2010) and the U.S. District Court for the District of Columbia decision in *SpeechNow.Org v. F.E.C.* (559 F.3d 686, 2010). Both precedents, referring to constitutional protection of political speech, invalidated various limits on independent expenditures allowing for uncontrolled contributions of individuals, organizations, and interest groups, among which were corporations. As a result, in the last three election cycles one could observe the growing role of independent expenditures, which especially was visible in the activity of newly-created organizations called Super PACs. These are special independent expenditure committees which can receive unlimited donations from individuals, corporations or other organizations, and – in contrary to political action committees – are not restricted by spending limits. Among 240 such institutions which made independent expenditures in the 2015-16 election cycle, 110 were classified as conservative, which means they supported Republican candidates. On the other hand, only 52 Super PACs were defined as liberal, thus supporting Democratic politicians. Additionally, among 48 committees which spent more than $1million during the campaign 32 were Republican-affiliated (CRP, *Super PACs*).

These figures indicate that Super PACs financially support Republican rather than Democratic candidates, especially when one realizes that among Super PACs actively participating in the 2016 presidential election, 25 supported Trump and only 15 Clinton. But the analysis of the amount of money contributed by these organizations leads to a contrary observation, as pro-Clinton Super PACs spent three times more during the campaign than their pro-Trump counterparts. Such a result could be obtained mainly due to expenditures made by Priorities USA Action Super PAC which raised 86 percent of all money that Clinton received through indirect support of Super PACs (CRP, *Super PACs*). Of course, as it is typical for outside spending, a lot of these funds were devoted to oppose Trump, but it does not change the conclusion that even if pro-Republican Super PACs are larger in quantity, they do not always provide for more funding than pro-Democratic Super PACs.

When a few weeks after the *SpeechNow.Org* decision, former Republican politician Karl Rove created a Super PAC called American Crossroads, which raised in 2010 election a record-breaking $325 million in support of Republican candidates (Mutch 2016: 76-77), it seemed that the GOP politicians would dominate Democrats in the race for money from outside groups. Criticism of the post-*Citizens* reality came even from the White House, as President Obama used his state of the Union address to underline its bad influence on American campaign finance system and American democracy (*Remarks by the President*). Despite his critical approach, Obama soon supported creation of a pro-Democratic Super PAC Priorities USA Action which has been donating money in independent expenditures every subsequent election cycle. Similarly, many other Democratic politicians raised concerns over the outcomes of SCOTUS decisions, as they feared they may not be able to raise as much money as Republicans. The analysis of the data regarding money raised and spent in 2011-12 election cycle proves that both parties quickly adapted to the new reality. It seems obvious that among groups supporting Republican candidates there are more corporations, whereas labor unions are more likely to convey money in support of Democrats. According to Robert G. Boatright, it is a prove of Democratic and Republican fundraising potential and the ability to gather around rich donors supporting both parties and providing for balance of the system (Boatright 2014: 167).

Apart from Super PAC's there are also other organizations actively participating in the campaign finance system as outside groups, such 527 committees (527s) and 501(c) organizations. The 527s are tax-exempt organizations under the Section 527 of the Internal Revenue Code (IRC), which do not make direct contributions for candidates in elections but they make issue advocacy expenditures, and are not bound by contribution or spending limits (Weissman, Hasan 2006: 79-80). Generally, 527s had broader impact on Republican campaigns to high federal offices, there were, however, election cycles during which these organizations raised considerable amount of money supporting liberal candidates, like the 2003-04 cycle in which they spent $185 million on Democrats and only $77 million on Republicans (Oświecimski 2012: 294). But starting with 2009-10 cycle the number of 527s supporting Republican candidates increased, and they were spending more money on independent expenditures than their counterparts financing Democrats (CRP, *527s*). It does not change the fact, that among the current registered 527s there is a large group of labor organizations which, traditionally, support liberal candidates, therefore candidates of the Democratic Party are not on the losing end in their campaign duels with Republicans.

Similar conclusions may be derived from the analysis of the functioning of the 501(c)s. These are non-profit organizations, operating under a different Section of IRC, which goal is to promote certain issues, and by doing that, they cannot be fully involved in politics. In practice, these organizations are able to participate in the election campaigns by financially supporting issue advocacy, provided they use less than certain amount of their budget, and their primary purpose is not political activity (Drutman 2016). Depending on the issues they promote, 501(c)s can be listed as charity organizations (subsection 3), general welfare groups (subsection 4), labor organizations (subsection 5), or business organizations. Analysis of the recent election cycles proves bigger activity of the 501(c)(4)s and 501(c)(5)s in the process of issue advocacy leading to financing political ads supporting or criticizing candidates of both parties. But there is a visible growth in electoral activity of general welfare groups, which spent millions of dollars on independent expenditures in the 2011-12 and 2012-13 election cycles. Despite the fact that there are both liberal and conservative 501(c)(4)s, such as American Civil Liberties Union (ACLU) and National Rifle Association (NRA), the data clearly indicate that conservative welfare organizations are more actively supporting Republican candidates than liberal organizations Democrats. During the record-spending 2011-12 cycle, when the independent expenditures of 501(c)s exceeded $329 million, 82 percent of money was used by conservative organizations and only 18 percent by the liberal ones (CRP, *Outside Spending*). The figures regarding outside money collected and spent in support of Republicans or opposing Democrats during the last election cycle confirms the advantage of GOP candidates in receiving financial support from outside groups. Therefore, 'dark money' seems to be used more often against Democrats than Republicans, and Trump's example from 2016 is just the exception that proves the rule.

Are the regulations pro-Republican?

The often raised contention is that the Democratic Party supports broad regulation of the campaign finance by federal government, as well as contribution and spending limits, whereas the Republican Party stands against governmental interference in electoral process, allowing big money in election campaigns and promoting broad access of various subjects in the process of donating campaign funds. Republicans do not have a good press, as liberal media often state, that GOP politicians bear responsibility for imperfect functioning of the campaign finance system, by blocking various legislative initiatives which aim at 'repairing' the system (Farrar-Myers, Dwyre 2007). Others argue that the main source of controversy, which is the active participation of corporation in the system, is the outcome of the policy of Republican Party which candidates are the main beneficiaries of such donations (Jones 2016; Grossman, Hopkins 2016; Oświecimski 2011; Judis, Teixeira 2004; Malbin 2003).

The main reason for such contention seems clear: in the United States, especially in 20th century, the Democratic Party was more active in initiating legislation increasing the powers of federal government over campaign finance issues, which was criticized by the Republican Party supporting decentralization and deregulation. Therefore, it is obvious that one may find more advocates of broader regulation among voters of Democratic than Republican candidates. On the other hand, according to 2015 public opinion poll, almost 80 percent of voters of both parties oppose *Citizens United* decision and believe it should be overruled (Farias 2015). Does it really mean that the history of the evolution of campaign finance regulations is an ongoing battle of two parties having opposite approach towards the flow of uncontrolled money and participation of interest groups in federal elections?

Since the beginning of the 20th century when first federal regulations of the campaign finance were introduced, politicians often participated in public discussion about the necessity of broader control of the growing funds in congressional and presidential election campaigns. But the voices supporting regulation from Congress and the White House came from both sides of the political spectrum. Among advocates of significant change of the way the system functioned were Democratic politicians Ben Tillman, Richard Neuberger and Russell Long, as well as Republicans Elihu Root, Theodore Roosevelt or H. Cabot Lodge (Corrado 2005; Mutch 2014; Laidler, Turek 2016). It was Republican initiative to introduce legislation preventing contributions from labor unions during the 1940s, as these organizations strongly supported Democratic candidates in congressional and presidential elections (Tyler 1999). During the legislative process in Congress concerning implementation of FECA and its Amendments there were also several Republican politicians supporting these initiatives (La Raja 2008: 75-78). Furthermore, the last vital reform of the campaign finance system was a result of bipartisan initiative of two Senators, Republican John McCain and Democrat Russ Feingold (Foerstel 1997: 95). From that perspective it is difficult to generalize about the reluctance of conservative politicians towards reform of the system and imposition of broader control of the flow of big money in election campaigns.

Other factor which could suggest bigger activity of Democratic politicians in initiating legislation limiting the role of money in federal elections could be the necessity to prevent corruption and financial scandals in which Republicans were involved. There is no doubt that the broadest campaign finance reform in the 1970s was a direct result of the Watergate scandal and its political outcomes, even if the events that took place during the 1972 election campaign did not directly concern campaign contributions and expenditures (Adamany, Agree 1975). There were also scandals of the 1920s in which Warren Harding's administration was involved, forcing Democrats to initiate legislation to prevent corruption (*Federal Corrupt Practices Act*, 43 Stat. 1070, 1925). On the other hand, one should remember that Democrats were also subject of investigations concerning unclear activities over campaign finance issues. In the 1960s there were two scandals involving politicians of the Democratic Party, who were accused of illegal financial operations: an aide of senator Lyndon B. Johnson, Robert Baker, and senator Thomas

Dodd (Bailey 1981; Alexander, Haggerty 1981). One of the reasons of congressional initiative regarding the campaign finance reform in the late 1990s concerned the way of collecting funds during the 1996 presidential campaign by Bill Clinton and Democratic Party committees (Hohenstein 2007: 244-245). The reality is more complicated and it proves that members of both sides of the debate over proper functioning of the campaign finance system were using the same crucial argument of limiting corruption which spoilt the electoral process and, in broader perspective, American democracy.

Another argument raised in the discussion about beneficiaries of the campaign finance system is the amount of money raised and spent by candidates of both parties. Obviously, if the sums of money raised/spent by Democrats and Republicans were disproportionate, it could strengthen the contention that the system promotes candidates of only one side of the political scene. The comparison of data on campaign expenditures in congressional and presidential races in the recent election cycles reveals that Democratic and Republican candidates spend on average similar amount of money. The closest figures may be observed in congressional races, where domination of candidates from one of the parties is hardly visible. There are often differences between expenditures in campaigns to the House of Representatives and Senate, like in election cycle 2013-2014 when Republicans spent more for the campaign to lower house, whereas Democrats to the upper house (Ornstein et. al. 2015), but it does not change the fact, that overall expenditures of candidates of both parties were similar. The analysis of the spending in presidential elections proves that there are cycles in which the differences between Democratic and Republican candidates' spending were more considerable. Such situation occurred especially in the 2007-08 cycle in which one can observe financial domination of Democratic candidates. It was the effect of imposing different strategy of fundraising by Barack Obama (private funding and the use of social media) and John McCain (public funding program) (Corrado 2010: 105-107).

Even if there were election cycles, when conservative candidates raised and spent more money than liberal candidates, such tendency was temporary, and there is no basis to argue that Republicans benefited more from the system than Democrats. A single candidate who raised the most money in history of U.S. presidential election campaign was a Democrat, Barack Obama, who collected over $750 million in the 2007-08 election cycle (Thurber 2010: 21). The 2008 campaign proved that Democrats have a huge fundraising potential, not only from small donors but also from large contributors. Big money does not only characterize Republican campaigns, even if there are more corporations and big businesses supporting them, and even if historically small donors supported them more often. Furthermore, the last race to the White House between Hillary Clinton and Donald Trump proves that Democrats are capable of raising and spending a lot more funds than Republicans (CRP, *2016 Presidential Race*), even if financial domination does not mean presidential nomination. Of course one should not forget about the millions of dollars pumped into the campaign by Republican supporters of Jeb Bush, Marco Rubio or Ted Cruz. If GOP leaders and candidates would quickly agree for one representative of the whole party in general elections, that representative could have raised a lot more money than Clinton did.

Critics of contemporary campaign finance system often raise an argument of uncontrolled financial support of Republican candidates by corporations and other outside groups which contribute by making independent expenditures in federal election campaigns (Whitehouse 2017; Jones 2016; La Raja 2008; Samples 2008). As was mentioned before, one can observe a stable growth in the number of such organizations actively participating in independent expenditures, as well as in the amount of money raised by them. There is no doubt that the majority of Super PACs, 527s, or 501(c)s have Republican affiliation, and they are making significant independent expenditures, but their impact on the final outcome of the elections is not so obvious, as their counterparts supporting liberal candidates, although in minority, have also huge fundraising potential. The examples of Priorities USA Action Super PAC, ACLU and several labor organizations which made independent expenditures during several election cycles proves that Democrats do have a strong financial aid from outside groups. And, according to the data from the last election cycle, Democratic candidate to the White House is capable of collecting more funds from indirect support of outside groups than her Republican rival, even when he does not have full backing of his own party (CRP, *2016 Outside Spending*). It would be unfair to admit, however, that the potential of Democratic candidates is equal to their Republican counterparts who can count on larger financial support from outside groups, especially in the post-*Citizens United* reality.

The Conservative coalition

In my opinion, the real source of the widespread conviction about the reluctance of conservative politicians to control the flow of money in federal election campaigns does not come from the analysis of congressional regulations but from SCOTUS adjudication. There are at least two crucial arguments in support of such a thesis. Firstly, almost all important legal suits challenging the constitutionality of campaign finance regulations were initiated by politicians of the Republican Party or individuals who supported them. Truman H. Newberry was a Republican candidate to Senate, who exceeded spending limits during his senatorial campaign which was the subject of *Newberry v. U.S.* (256 U.S. 232, 1921). Mitch McConnell, the current majority leader in Senate and a strong opponent of reforming the campaign finance system, filed a suit against certain provisions of BCRA which banned the use of soft money and limited the corporate participation in electoral process (*McConnell v. F.E.C.*540 U.S. 93, 2003). Businessman Shaun McCutcheon, who supported Republican candidates, became a plaintiff in *McCutcheon v. F.E.C.*, in which SCOTUS invalidated aggregate contribution limits in election cycle (572 U.S. 12-536, 2014).

Furthermore, disputes *F.E.C. v. National Conservative Political Action Committee* (470 U.S. 480, 1985), *Colorado Republican Federal Campaign Committee v. F.E.C.* (518 U.S. 604, 1996) and *F.E.C. v. Colorado Republican Federal Campaign Committee* (533 U.S. 431, 2001) concerned electoral committees or political action committees representing Republican candidates. Similar connections occurred between the plaintiffs and Republicans in cases *F.E.C. v. Massachusetts Citizens for Life* (479 U.S. 238, 1986) and *F.E.C. v. Wisconsin Right to Life* (551 U.S. 449, 2007), where parties were pro-life organizations promoting conservative candidates, or *Citizens United v. F.E.C.* (558 U.S. 310, 2010), regarding a corporation which financed and published a movie criticizing Hillary Clinton during presidential primaries of 2008.

Secondly, the reason why some analysts argue that the Republican Party is responsible for the current status of the campaign finance system should be defined in the argumentation raised by certain Justices of SCOTUS. In the beginning of the 21st century a coalition of Justices critical towards congressional campaign finance regulations was established. Chief Justice William Rehnquist was the leader of that coalition which consisted of other Justices appointed by Republican presidents: Antonin Scalia, Anthony Kennedy and Clarence Thomas. For the first time that coalition appeared in *F.E.C. v. Colorado Republican Federal Campaign Committee*, when four conservative Justices argued for abolishment of spending limits for coordinated expenses. Although the concept of sustaining the limits supported by liberal Justices prevailed, strong dissents underlined the necessity to protect freedom of speech of contributors and candidates in the process of financing election campaigns (533 U.S. 431, 2001). The same coalition voted against the constitutionality of certain provisions of BCRA in *McConnell v. F.E.C.* stressing that ban on soft money and limitations of 'electioneering communication' regulated by the 202 legislation violated freedom of speech of subjects financing election campaigns (540 U.S. 93, 2003).

The turning point in SCOTUS adjudication in campaign finance issues occurred in 2005 with the change in Court membership forced by the death of Chief Justice Rehnquist and the resignation of Associate Justice Sandra Day O'Connor. Rehnquist was replaced by John Roberts, jr. who shared similar views on the issue, but O'Connor's replacement marked an important change in the approach of SCOTUS towards the control of money in election campaigns. President George W. Bush appointed Samuel Alito to the post, who was a supporter of the freedom of speech argument in campaign finance cases and quickly joined the conservative coalition (Laidler 2016: 495-498). Since that moment in almost all cases concerning financing federal election campaigns the conservative coalition outvoted liberal Justices consolidating antiregulatory and pro-free speech approach towards the issue. The approach could be observed in most important campaign finance cases like *F.E.C. v. Wisconsin Right to Life*, *Davis v. F.E.C.*, *Citizens United v. F.E.C.* and *McCutcheon v. F.E.C.*

For conservative Justices the freedom of speech argument is crucial for the integrity of the electoral process, therefore any effort to limit financial activities of individual or collective donors contributing in election campaigns is defined as unconstitutional. Even if these Justices do not fully neglect the idea of governmental control over campaign finance, some of them argue that any limits on contributions and spending should be abolished (Thomas dissent in *McCutcheon* 572 U.S. 12-536, 2014). The existing ideological division in SCOTUS strengthens the argument that liberal Justices are more willing to support broader control of the flow of money in election campaigns than their conservative counterparts. The change in the Court membership resulting from Justice Scalia's death maintained the status quo, as Justice Neil Gorsuch seems to be a close follower of Scalia's approach towards campaign finance with his negative approach towards regulating money in politics (Torres-Spelliscy 2017). Analysis of the current ideological divisions in the Court it is hardly to imagine that the anti-regulatory direction of campaign finance issues would change. And if President Trump has a chance to appoint another Justice, the American campaign finance system will come closer to invalidating all other existing limits on contributions. Who shall benefit then? Obviously Republicans, but Democrats will quickly find a way to use the system for their own expenses.

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