

Dark Money and Super PACs in American Politics

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INTRODUCTION

Money in politics is as American as apple pie, dating to the nineteenth century when Andrew Jackson would reward large campaign contributors with government positions in return for political loyalty. Put very simply, money equals access to politicians. In the current American electoral system, politicians must raise ever-increasing sums of money to win elections. This creates a demand to raise large sums of money that politicians must meet to win elections and stay in power. This requirement is met by the economic elite and special interest groups who fundraise and donate untold sums via dark money groups and Super PACs, both of which allow for unlimited campaign contributions and, in the case of dark money groups, shielding the identity of their donors. In return for helping politicians, wealthy campaign contributors and special interest groups know and expect the politicians to propose and support legislation that benefits their special interest.^{xi}

Politicians in America are becoming increasingly reliant on wealthy people and groups to stay in power. The result is that politicians are working more on behalf of the economic elite and special interest groups than for their constituents. Money in politics is considered a form of free speech and is therefore protected by the 1st Amendment. However, the same laws and judicial rulings protecting money in politics have also created legal loopholes resulting in the creation of the dark money groups and Super PACs that corrupt the American political system. This current system of monetizing American politics has the potential to lead to corruption and cronyism. Certain actions can be taken to regulate the flow and transparency of money in politics. This could lead to a more harmonious political ecosystem, one where money is still protected as free speech but where contributions from dark money groups and Super PACs are not allowed to drown out the voices of average Americans.

OVERVIEW

Throughout American history, Congress has passed legislation aimed at regulating and defining the role of money in politics. There have been several landmark Supreme Court cases ruling against such regulation, which has laid the foundation for the emergence of PACs, Super PACs, and 501(c)4s (known as dark money groups) through these legal loopholes left open by the Court.

The system known as “political patronage” was set up by President Andrew Jackson, wherein wealthy campaign contributors were rewarded for their political loyalty with high

positions of authority in the government. This system was common for much of the 19th century until President James A. Garfield was assassinated by Charles J. Guiteau, a wealthy lawyer who felt slighted after not being offered a government appointment in reward for his campaign contributions.ⁱⁱⁱ In response, Congress quickly passed the Civil Service Act. It prohibited government positions from being filled by people with direct political or party affiliations, requiring instead they be given out based on merit. Over the next several decades, Congress passed several laws directed at regulating campaign contributions and limiting what groups or organizations could give.

By 1943, laws had come to regulate how much money wealthy Americans could contribute to campaigns and also limited direct contributions by corporations, unions, and trade organizations to political candidates. These laws specifically did not limit “voluntary associations” from contributing to a candidate. Taking advantage of this legal loophole, the first Political Action Committee (PAC) was formed in 1943, which are now defined as groups that spend over \$1,000 to influence the outcome of a federal election.

PACs represent business, labor, and ideological interest and can give \$5,000 to a candidate committee per election (primary, general, or special). They can also give up to \$15,000 annually to any national party committee, and \$5,000 annually to any other PAC. They may receive up to \$5,000 from any one individual, other PAC, or party committee per calendar year.ⁱⁱ This increases the amount individuals can give over the federally individual limit of \$2,800 while they are not allowed to receive contributions from unions or corporate treasury funds. A PAC must register with the Federal Election Commission (FEC) within 10 days of its formation, providing its name and address, treasurer, and any connected organizations. Affiliated PACs are treated as one donor with regards to contribution limits. Political action committees opened the door to wealthy contributors donating more than the federal amount of \$2,800, though individual contributions to PACs are capped at \$5,000.

Three landmark Supreme Court Cases further clarified the role money would play in American politics. In 1976, *Buckley v. Valeo* struck down the limits on campaign spending in the Federal Election Campaign Act of 1971, stating that limiting spending restricted free speech and was therefore unconstitutional. The 1978 ruling *First National Bank of Boston v. Bellotti* defined, for the first time, the free speech rights of corporations and found that corporations have a 1st Amendment right to make contributions toward ballot initiatives.ⁱ But no Supreme Court ruling was more consequential than the 2010 *Citizens United v. Federal Election Commission* ruling in which the Court held that the free speech clause of the 1st Amendment prohibits the government from restricting independent expenditures for political communications by corporations (including nonprofits, labor unions, and other associations).ⁱ This ruling allowed for the genesis of Super PACs and 501(c)(4)s.

Super PACs—also known as independent expenditure-only political committees—meet all of the same criteria of a political action committee (PAC) with one notable exception: they are allowed to accept unlimited contributions from non-foreign sources, including unions and corporate treasury funds. They can also give unlimited amounts of money to influence a federal election.^{xiii} The only caveat is that super PACs are legally barred from contributing directly to candidates or coordinating with them regarding how super PAC funds are spent. Individual contributors to the super PACs, and the expenditures of those super PACs, must be disclosed to the FEC and made available to the public.ⁱⁱ Super PACs have granted the ability to contribute greater sums of money to candidates and races, but there are still restrictions for certain people, including foreign nationals and federal contractors.

The Citizens United ruling also resulted in the formation of 501(c)(4)s. Dark money groups can accept unlimited contributions from any source—foreign or domestic—and are not legally required to disclose their contributors to the FEC.ⁱⁱ They skirt what laws are on the books by adhering to a regulation stating that 501(c)(4)s must not spend more than 50 percent of funds on electioneering. They typically act as the anonymous collection plate for super PACs. Wealthy individuals donate to groups that align with their values and special interests, which then contribute to super PACs that align with the donors’ values and special interests while ultimately shielding the identity of the campaign contributor.

These laws and judicial rulings have constructed a political ecosystem of increasingly corrupt inequality. The economic elite and special interest groups engage in a feedback loop with politicians—contributing to election campaigns and, in return, having politicians who will pass laws and tax breaks favoring them. This, in turn, ends up making the special interest groups even better financed. The wealthier these groups become the more they can elect politicians and drive government policy while the balance of power between average citizens and these groups grows ever more unequal.^{iv}

CURRENT STATE OF MONEY IN AMERICAN GOVERNMENT

A 2012 Princeton empirical study, the largest of its kind, examined the relationship between an interest in the adoption of a governmental policy by three distinct groups and the probability that the policy being adopted. The study concluded: “When the preferences of economic elites and the stands of organized interest groups are controlled for, the preferences of the average American appear to have a minuscule, near-zero, statistically non-significant impact upon public policy.”^{vii} This set of graphs below highlight the direct correlation between an increased interest by the economic elite and special interest groups toward a governmental policy and the probability that it will be adopted. It also illustrates that the average citizen has no impact on public policy decisions. This study helps to demonstrate how the economic elite and special interest groups are corrupting the American political system through campaign-contribution tools such as dark money groups and Super PACs in order to dictate the course of public policy.

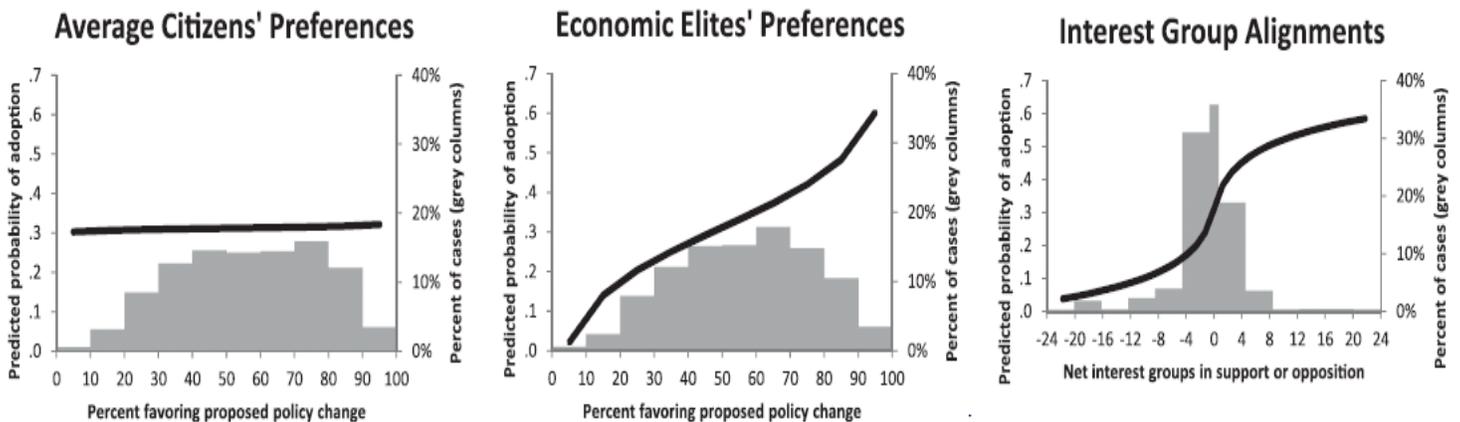


Figure 1: From Gilens and Page, “Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens.”^{vii}

EXECUTIVE BRANCH

The 2020 presidential race saw a massive increase in spending compared to just four years prior. Projections estimate that the total cost was \$14 billion—roughly the cost of the previous two presidential elections combined.^v Below are two graphs that show the total cost of both the primary and general elections. One represents the total spending broken down by political party and adjusted for inflation, the other shows increasing costs broken down by congressional and presidential races.

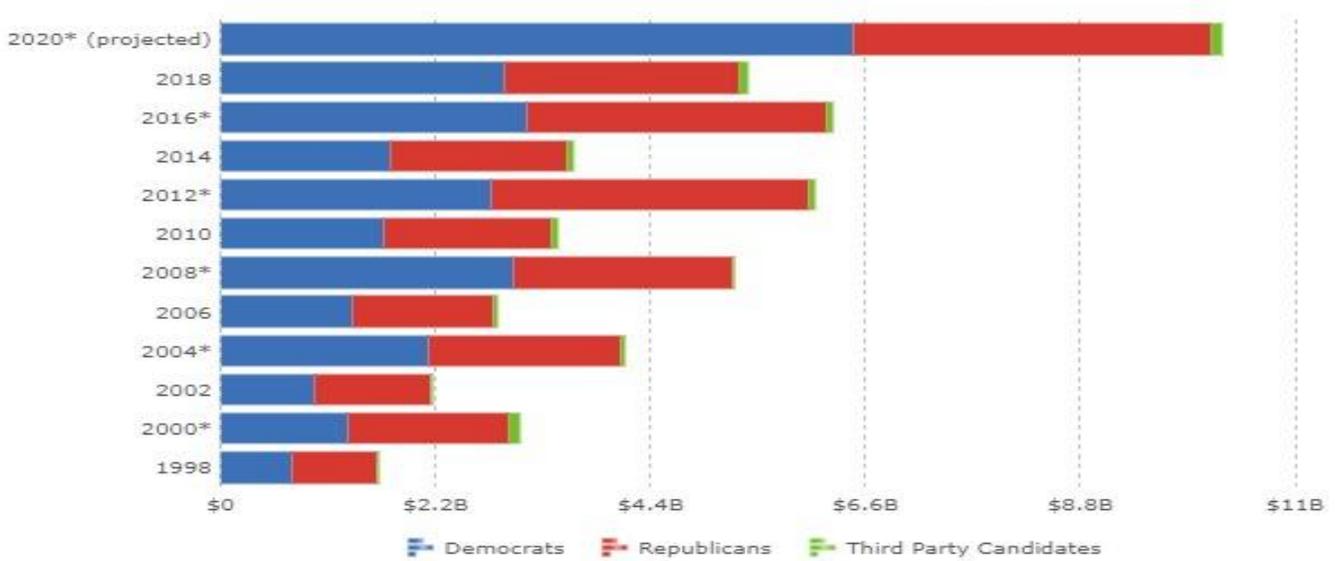


Figure 2: "Cost of Election"^v

CYCLE	TOTAL COST OF ELECTION	CONGRESSIONAL RACES	PRESIDENTIAL RACE
2020* (Projected)	\$14,404,000,000	\$8,703,000,000	\$5,701,000,000
2018	\$5,902,000,000	\$5,902,000,000	N/A
2016*	\$7,027,000,000	\$4,451,000,000	\$2,576,000,000
2014	\$4,202,000,000	\$4,202,000,000	N/A
2012*	\$7,091,000,000	\$4,134,000,000	\$2,958,000,000
2010	\$4,324,000,000	\$4,324,000,000	N/A
2008*	\$6,271,000,000	\$2,949,000,000	\$3,322,000,000
2006	\$3,636,000,000	\$3,636,000,000	N/A
2004*	\$5,688,000,000	\$3,068,000,000	\$2,620,000,000
2002	\$3,138,000,000	\$3,138,000,000	N/A
2000*	\$4,636,000,000	\$2,511,000,000	\$2,126,000,000
1998	\$2,575,000,000	\$2,575,000,000	N/A

Table 1: "Cost of Election"^v

With the cost of elections steadily increasing each election cycle, the need for presidential candidates to secure more campaign contributions also grows. Since the Citizens United ruling,

one-third of the billions of dollars in outside spending came from dark money groups. By 2018 the percentage had increased to over 50 percent.^{iv} These groups, along with Super PACs, are funded by the economic elite and special interests because they view this as an investment. The wealthier these groups become, the more they invest into this feedback loop, one that grows their wealth and further exacerbates the growing financial and political inequality in America.

LEGISLATIVE BRANCH

Between 1986 and 2012, the average cost of a Senate race increased by 62 percent, while the average cost of a Congressional seat increased by 344 percent. In 2012, House incumbents raised an average of \$2,400 per day in the two-year cycle. Senate incumbents raised an average of more than \$4,700 per day over six years. Former Congressman Tim Roemer (D-IN) estimates that, for a member of Congress, three hours out of every ten-hour workday is dedicated to “dialing for dollars,” a process of cold calling known party donors and asking them to contribute to your campaign.

Those numbers have only continued to increase in the wake of the Citizens United ruling. A 2016 investigative report by *60 Minutes* uncovered that the Republican National Committee (RNC) and Democratic Congressional Campaign Committee (DCCC) expect their members to dedicate up to 30 hours per week fundraising. Congressmen report an expectation of meeting fundraising quotas of \$18,000 per day to satisfy party leadership.^{iv} Representatives also state that the Citizens United ruling directly led to the exorbitant increase in the amount of time spent reaching out to wealthy campaign contributors. This has created a system where there are buildings, beside the U.S. Capitol, that act as call centers for politicians to obey the law—which prohibits fundraising or campaigning in federal buildings—to conveniently contact wealthy campaign contributors.^{viii} This extreme amount of time is dedicated to fundraising because data proves that the candidate who raises the most money oftentimes wins. Below is a graph that illustrates the percentage of House and Senate races that were won by the candidate who spent the most money.^{xv}

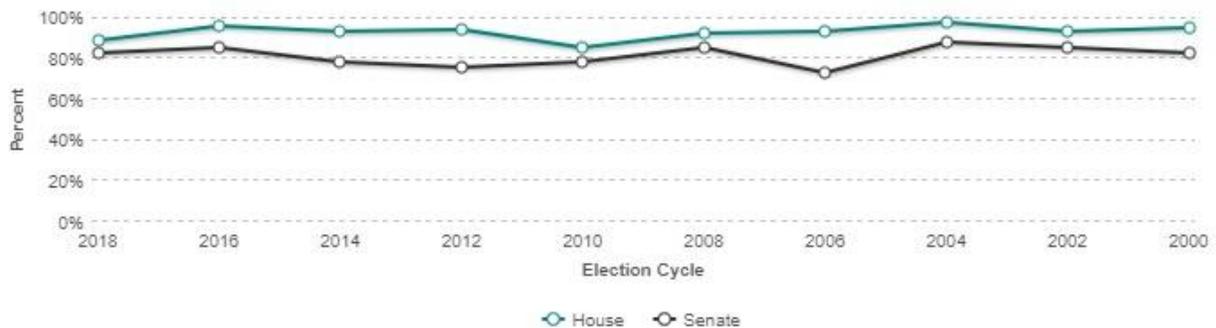


Figure 3: “Did Money Win”^{vi}

The datasets show that candidates who outraised and outspent their opponents won in an overwhelming number of cases. This reinforces the belief that politicians need to rely on the economic elite and special interest groups to fundraise at the level necessary to ensure running a successful campaign. As the cost of elections skyrocket, so too does the cost of government.

With representatives and senators forced to raise ever-increasing amounts of money to maintain their seats of power, the amount of time spent fundraising increases and time spent serving the average constituent decreases. This system of special interest-funded elections leads to a dysfunctional government, one where elected officials are more concerned with satisfying the needs of their wealthy benefactors than with serving the people who elected them. Former Representative Roemer sums it up perfectly: “Time spent at the Democratic National Committee or the Republican National Committee offices begging wealthy ‘1-percenters’ for campaign funds is time not spent listening to teachers, nurses, or farmers in their offices in the House Rayburn or Senate Hart Building.”^{xv}

JUDICIAL BRANCH

One of the most politically contentious moments of 2020 was the death of Supreme Court Justice Ruth Bader Ginsburg, which sparked the controversial nomination of Supreme Court Justice Amy Coney Barrett. During the Senate Judiciary Committee hearings on her nomination, Senator Sheldon Whitehouse illustrated the role that dark money groups play in the selection of judicial nominees—and eventual appointees to lifetime terms—in the judicial branch. He demonstrated how dark money groups organize judicial campaigns and submit amicus briefs (legal briefs in support of a case currently being adjudicated), which are designed to lose in lower circuit courts so as to be quickly appealed through the appellate courts and eventually to the Supreme Court.

Senator Whitehouse ties two points together by noting the clear conflict of interest in having Supreme Court justices, some of whom were selected by dark money groups, rule on amicus briefs submitted by the same groups. He called out by name the Judicial Crisis Network as a dark money organization created to influence and, if possible, select nominees to the judicial vacancies.

“For big special interests, the rewards of an amenable judiciary are immense. A well-stocked bench can deliver things elected Members of Congress would never vote for: such as letting corporations spend unlimited money—even nowadays anonymous, untraceable ‘dark money’—in our elections,” Whitehouse said at the Barrett hearing. “The prizes are enormous, and big special interests have the stamina to play the long game. Which they did.”^{xvii}

The need for politicians to raise huge sums of campaign donations has created a system of undue influence between the economic elite/special interests and politicians. And such influence over politicians is used to help select judicial nominees for lifetime appointments.

By ensuring they have control over the executive, legislative, and judicial branches of American government, the economic elite and special interest have created a trifecta of power and corruption. The role that dark money plays in the judicial branch undermines the integrity and credibility of the entire American judicial system. This leads to a dysfunctional government where people do not respect the pillars of society and could, eventually, cause society to crumble.

INTERNATIONAL COMPARISONS

The role that money plays in politics in America is very different than in Western European political campaigns. The approach campaign finance regulation of the countries of the Organization for Economic Co-operation and Development (OECD) can be dissected into four

distinct categories: 1) no limits on campaign contribution or spending, 2) limits on both campaign contributions and campaign spending, 3) limits on spending but not donations, and 4) limits on donations but not on campaign spending.

No limit nations in Western Europe include Germany, Luxembourg, the Netherlands, Spain, and Switzerland. They place no restrictions on how much an individual can contribute or how much a candidate can spend campaigning. However, the traditions and limitations in these countries prevent the rise of wealthy donors financing campaigns at the levels we see in the United States. There are limits to how much candidates can advertise on TV, campaigns are largely government-funded, and there are restrictions on how long before an election you can start campaigning (usually an extremely short time compared to U.S. campaigns).^{xvi} All of these factors drive down the overall cost of elections, making the need to raise untold sums of money unnecessary.

In Germany, for example, there are no attack ads, officials are only allowed to start campaigning six weeks before election day, and each party is allowed to run only one 90-second TV ad during the entire campaign. In contrast to the United States, during an entire German election season even the larger campaigns of the main parties—like the SPD or Angela Merkel’s Christian Democratic Union—cost somewhere between €20 to €30 million for all politicians combined. Meanwhile, a single U.S. Senate seat now costs an average of \$10.5 million, while President Obama’s reelection campaign alone cost \$700 million.^x Because German elections cost less and are largely government-funded, candidates do not spend as much time fundraising and, instead, can spend time on legislative work serving the people that elected them.

Western European countries that limit campaign contributions and campaign spending include Belgium, France, and Ireland. These countries place a limit on how much an individual is allowed to give to a party or a candidate and also regulate the amount those parties and candidates are allowed to spend. In most of these countries, spending limits are in the five-figure range, which eliminates the need to fundraise from wealthy donors because the cap on how much spending is allowable is so low.

Other Western European countries only place limits on campaign spending, but not on campaign contributions, including Italy and the United Kingdom. There is no need to regulate campaign contributions because the limits put on campaign spending serve that purpose.^{xvi} If a candidate is only allowed to spend a certain amount of money on a campaign, they will not waste time raising money that they cannot spend and instead interact with their constituents to garner votes. This is clearly more beneficial to the people they represent.

The only Western European country with campaign finance laws that limit contributions, but not spending like the United States, is Finland. Unlike U.S. campaign finance laws, Finnish presidential candidates must be able to account for all contributions they receive.^{xiv} These laws were recently overhauled in response to Finland receiving criticism from the international community over a lack of transparency.

Several factors—including party traditions, government-funded campaigns, and limits on campaign contributions and spending—drive down the overall cost of elections in Western Europe. Low-cost elections reduce the need for candidates to spend time fundraising large sums of money and elections are substantially less costly when compared to the United States. Because of that, candidates in Western Europe do not have to ceaselessly fundraise from wealthy donors and are therefore more able to spend more time interacting with constituents and working on legislation. They are less beholden to special interest groups, unlike what results from the

campaign finance system we see in the United States. A functional government is one in which elected representatives serve the interest of their constituents—and not special interest donors.

DISCUSSION AND CONCLUSION

Money has played a role in American politics since the country's founding. It is considered a form of free speech and free expression for voicing support or disapproval of a politician or political issue. It is not inherently a bad thing that money plays a role in American politics. The issue is that politicians are required to raise ever-increasing amounts of it to get elected and stay in power.

The economic elite and dark money groups raise funds for political use via super PACs and dark money groups. With it they buy political loyalty, expecting politicians to support legislation that benefits their interests and oppose proposals that could negatively impact them. The economic elite and special interests have used super PACs and dark money groups to fill the judicial branch with selected appointees that ensure their interests are protected in the courts. This feedback loop between the economic elite, special interest groups, and politicians has created a political system that is increasingly corrupt and unequal. In 2014, the wealthiest 400 families gave half of the money spent in that election cycle. The wealthiest .002 percent of people fund the majority of the congressional campaigns.^{xii} In the current system, the economic elite and special interests are not just affecting who wins an election, but also determining who gets to run. Such control over elected officials, legislators, and justices is an inequitable system that disenfranchises the average voter.

Several solutions could shift the balance of power out of the hands of dark money special interest groups and back into the hands of the American people—where it belongs. Those include:

- Adopting laws and norms like those in Europe that regulate campaign contributions, spending, and the length of campaigning.
- Passing stricter legislation regarding campaigning and campaign finance regulations.
- Eliminating “dark money” groups by closing the legal loopholes that allow them.

Congress could adopt stricter laws and norms surrounding when it is acceptable to start campaigning for public office, as in Western Europe. Currently, the race for president of the United States begins at least two years before Election Day. The more days spent campaigning expands the cost of running and contributes to the dynamic of having to raise increasing amounts of money. The fewer days there are to run a campaign, the lower the cost of elections will be. This would reduce the dependence of American politicians on special interest and dark money groups.

Campaign finance legislation to regulate the campaign finance system and increase transparency is needed. A proposed piece of legislation is the Citizens Equality Act, which calls for public matching funds for small contributions, an overhaul of lobbying and ethics laws, and the end of dark money special interest groups through increased transparency laws—as well as an end to gerrymandering. Another piece of legislation proposed by Senator Whitehouse, the DISCLOSE Act, would require an organization with campaign expenditures to disclose to the FEC any donor who contributes more than \$10,000.

A third solution is the elimination of Super PACs and dark money groups by closing the legal loopholes that allow for these groups to exist in the first place. Dark money groups are 501(c)(4)s because that is the line in the tax code where the loophole exists that allows them to raise unlimited amounts of money from anonymous donors. By eliminating such loopholes that skirt campaign finance laws, more transparency would flow into the system and politicians would not have such groups to rely on for campaign funds. This could force them to work on behalf of their constituents to earn political and financial support.

In conclusion, the current state of money in American politics is one of corruption through inequality. The economic elite and special interest groups have an undue influence on every facet of American government across the executive, legislative, and judicial branches and exercise control over who can run for office, what legislation gets passed, and which judges get nominated to the bench.

The current state of privately funded campaigns has generated an environment where politicians are required to raise vast amounts of money to run for office. This has been exacerbated by the Supreme Court's *Citizen United* ruling allowing super PACs and dark money groups to become crucial to the American campaign finance system.

The economic elite and special interest raise these funds for politicians via super PACs and dark money groups. In return, these groups expect politicians to represent their interests in Congress—even if this means going against the will of the people who elected politicians to represent them. Changes need to be made to campaign norms and finance laws to shift the balance of power away from the economic elite's special interest groups and back into the hands of the American people. Money in politics is a bedrock of American democracy, but dark money, SuperPACs, and an unregulated campaign finance system are eroding it.

NOTES

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