



Regulating the U.S. Campaign Environment: Politics and Policy

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Introduction

Members of Congress run campaigns as candidates and regulate them as policymakers. Recent coverage of Cambridge Analytica voter-targeting using Facebook data is one of the latest examples of the connection between campaign conduct and public policy. Reports suggest that this case involves consumer-privacy questions that are normally beyond campaign regulation, and questions about whether foreign nationals were impermissibly involved in campaign decisionmaking—a topic well within campaign finance regulation. In other recent examples, reports of foreign interference in the 2016 U.S. elections have also raised questions about the prohibition on foreign money in U.S. campaigns and regulation of online political advertising.

What is the connection between the U.S. campaign environment, or campaign conduct, and public policy? Are recent concerns about regulating campaigns historically unique? This CRS “Insight” provides brief discussion that may be relevant as Congress considers legislation or oversight responding to the 2016 election cycle and preparing for 2018. It does not cover the details of individual cases, including the permissibility of specific conduct.

Regulating Campaigns versus Elections

Elections in the United States are highly regulated and primarily a state-level responsibility. Provisions in state law and, to a lesser degree, federal law, address topics such as ballot design, voter eligibility, and election equipment. Except for campaign finance policy, U.S. *campaigns* are subject to relatively little regulation. First Amendment protections, jurisprudence, and American political culture all account for a comparatively deregulated campaign environment. There is mixed evidence about how much campaigns

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affect electoral outcomes.

Law, Regulation, and Campaign Conduct

There is no uniform standard for campaign conduct in the United States. Primarily, federal policy regulates how campaigns and related entities raise and spend money. Most regulation of campaign conduct rests in campaign finance law (the Federal Election Campaign Act, FECA; 52 U.S.C. §§ 30101-30146) and Federal Election Commission (FEC) rules. These address topics such as:

- permissible and prohibited sources of contributions and expenditures (including a broad prohibition on fundraising, spending, and certain campaign involvement by foreign nationals);
- contribution limits;
- permissible and prohibited uses of campaign funds;
- public disclosure of contributions and expenditures; and
- disclaimers required for political advertising.

Most of these provisions apply to a limited set of actors known as *political committees*. These are candidate campaign committees, party committees, and political action committees (PACs). In addition, campaign finance policy primarily affects activities that explicitly advocate for election or defeat of political candidates, or, in some cases (*electioneering communications*), certain pre-election advertising that mentions candidates but does not explicitly call for election or defeat.

Other areas of law and regulation sometimes affect campaigns, but do not specifically address campaign conduct. For example, state or local property law might govern disputes over campaign assets. In general, however, barring some other provision of federal, state, or local law (such as discrimination based on race; or corporate law), federal campaign finance policy is silent on topics such as:

- campaign management, including strategy, theme, and message;
- field activities (e.g., get-out-the-vote (GOTV) efforts);
- voter targeting;
- strategic relationships among political committees and other organizations, provided that they do not violate prohibitions on coordination or result in prohibited in-kind contributions;
- use of political consultants and vendors; and
- commercial transactions, provided that they are at fair-market value.

Discussion

Concern about American campaign conduct is not new. Mostly through campaign finance policy, Congress has for decades sought to shape campaign practices through law and regulation. Most campaign conduct, however, is left to the discretion of individual political actors and political professionals. A political consultant code of ethics discourages some practices, such as false attacks on opponents, but adherence is voluntary.

Campaign tactics aside, the campaign environment also has been a steady source of concern in American politics. For example, predicted declines in political parties and party identification among voters have fueled policy debates and scholarly research (with mixed findings) since the 1950s. Shortly thereafter, concern shifted to the rise of “candidate-centered” campaigns, growth in the political consulting industry, and the importance of costly campaign advertising (which some warn is overly negative and others say

provides useful contrasts among candidates). Each of those factors, and others, initially was greeted with alarm and later became an established part of American politics, although debates remain.

At least three factors highlighted during the 2016 cycle potentially are noteworthy compared with historical concerns about American campaign conduct. First, fierce competition and changing environments are familiar to American campaigns. However, those campaigns have not traditionally had to wage domestic political battles in an environment that might also be manipulated by a foreign actor.

Second, campaigns have always had to adapt to new technologies. For example, campaigns have long used microtargeting to identify likely voters and produce advertising. Campaigns also successfully use social media to engage new voters and mobilize supporters. On the other hand, social media and microtargeting might demobilize or misinform individual voters, particularly if used by outside actors seeking to disrupt the electoral process rather than domestic political opponents simply offering an alternative, traditional political message.

Third, the potential for foreign interference and cyber intrusions (even from domestic sources) present new challenges for campaign organizations. Most campaigns are short-lived with transient staffs. Longer-term investments in electronic security or other types of organizational continuity are limited by professional experience and budgets. Even with greater awareness of potential security vulnerabilities, many political committees have limited abilities to protect their systems and data. This is especially true for candidate committees, most of which have small professional staffs and depend heavily on volunteers.

Overall, the effect of legislation and oversight designed to safeguard the American political system depends on whether campaigns, elections, or both are covered; and how such efforts balance preserving an open, democratic political system with combatting foreign influence and responding to changing technology. In some cases, these efforts might involve attention to other areas of public policy, and effort from agencies that do not normally affect campaigns and elections.

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