Conclusion

"Special interests" and money have played a role in the operation of the government of the United States since our nation was founded. How much money is too much? When does money buy an election? When is money just a contribution? Simple questions? Not really. These were some of the issues that lawmakers and others wrestled with following the Watergate Era abuses that occurred in the 1972 presidential election. Perceiving a public outcry of support, Congress sought to reform the manner in which politicians do business by reforming our nation's federal campaign finance laws. The result, a systemic shock to our political system, came in the form of landmark campaign finance legislation that today appears to be flailing to stay afloat.

In truth, it is difficult to see how a small contribution could corrupt a lawmaker into selling their vote. But, it has happened before and it will undoubtedly happen again. Money drives the political economy of politics. Money is a form of political persuasion — and a loud and compelling one at that. Money can be used to try to persuade a lawmaker to act in a certain manner. Money can also be used to try to persuade the electorate to cast their votes in a particular manner. Simply put, money and self interest, or "special interests," drive the American political system.

The Federal Election Commission regulates our nation's political economy. It, however, is only one part of the federal campaign finance system. The agency is not perfect. Rather, it is far from perfect: it is a cumbersome agency focused on protecting confidentiality that undertakes its activities in a methodical manner. The result is that the

agency operates slowly with activities that tend to be compartmentalized.

In truth, it does appear that the Federal Election Commission remains focused on its primary functions of disclosure, enforcement, implementation of the Presidential Election Campaign Fund, and serving as the hub for the distribution of information related to federal elections in the United States. And, there are many things that the Federal Election Commission does extremely well. In fact, the vast majority of all individuals and political entities filing with the Federal Election Commission voluntarily comply with the law. Furthermore, the agency's structure does seem fairly conducive to accomplishing the task of offering final interpretation, implementation, and enforcement of our nation's federal campaign finance laws.

But today, our nation's federal campaign finance system faces many of the same problems that faced the Federal Corrupt Practices Act of 1925. Then, as now, the law was fairly extensive, but the law lacked an effective enforcement mechanism, and could be easily circumvented. Penalties were high, but they had to be enforced to have any impact. The result then, as it is today, was that there was little cost associated with not complying with the law.

It is the Federal Election Commission's enforcement of the Federal Election Campaign Act that appears to be at the root of the problem today. An increasing workload, more complex financial transactions, a lack of available fiscal resources, combined with the constrained nature of the agency's decision-making processes, appear to be hampering the agency's enforcement efforts. The entire Office of the General Counsel has four investigators to look into allegations of campaign finance violations. Writing over ten

years ago in Broken Promise, Brooks Jackson said, "[t]he FEC lacks the most basic tool for conducting real investigations — investigators. The staff includes scores of lawyers and financial auditors, but nobody whose job is to seek out and interview witnesses."[1]

This lack of resources and increasing workload was the reason that the agency adopted the Enforcement Prioritization System that was discussed in Chapter Six. Did the Enforcement Prioritization System improve agency efficiency? And, did the Enforcement Prioritization System improve the manner in which our nation's federal campaign finance laws are enforced? The data indicate that the answer to the first question is yes, while the answer to the second is no. While the Enforcement Prioritization System allows the Federal Election Commission to process a larger number of allegations, a larger percentage of all allegations now result in no formal action being taken. Fully, 54.79% of all allegations profiled in Chapter Six for the first five years following the enactment of this enforcement system saw the Federal Election Commission take no action. This compares with 21.34% of all of the allegations profiled in Chapter Six having no formal action taken in the several years proceeding the enactment of this "efficiency" measure. Additionally, the agency reached conciliation agreements with respondents more than three times as often in the several years prior to the enactment of the Enforcement Prioritization System, as in the first five years after the system's enactment.

The application of Matthew Holden, Jr.'s model for examining regulatory agency decision-making as a bargaining process, however, leads one to expect that the enforcement prioritization system should allow the Federal Election

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[1] Brooks Jackson. Broken Promise, (New York: Priority Press Publications, 1990), p. 7.

Commission to dispose of allegations in an “efficient” manner, but that the level of enforcement should not be greatly improved. The agency is still constrained by the same factors that constrained the agency prior to the implementation of the Enforcement Prioritization System. The only thing that has changed is that the agency has improved the efficiency with which it disposes of allegations of campaign finance violations. Enforcement has not been strengthened, nor should one have expected it to be otherwise.

Should Congress change the agency? The answer to that question depends upon one’s self interests. Does one favor more strict limitations on campaign finance or fewer restrictions? Any new agency would face the same challenges, bureaucratic hurdles, and constraints that the present agency faces. And, history has shown that merely altering the federal campaign finance law environment does not mean that the regulatory agency will find success in enforcing the law and regulations against those who may have committed violations. The enforcement profiles that this dissertation has created document this fact.

While many component parts of the regulated community do in fact follow the Federal Election Commission’s interpretation of our nation’s federal campaign finance laws, the problem appears to be on the edge of the law. That is, where individuals and political entities regulated by the Federal Election Commission deem that there is a political advantage that can be gained through rationally following their own interpretation of the federal campaign finance law, not that of the Federal Election Commission. But, strengthening the law and closing “loopholes” only to have the regulatory agency undertake limited constrained enforcement, with little real consequence for not complying with the law, raises a series of

real policy issues. Should Congress and the President work to strengthen the law? Should the Congress and the President focus on reforming the regulatory agency itself? Should the system be left as it is? Or, should the entire system be scrapped altogether?

The findings by Brooks Jackson also appear to concur with those of this dissertation. He writes, "[l]eaders on both parties have called for new and more restrictive campaign finance laws. Yet since neither side has any plan to repair the flawed enforcement machinery, they are calling merely for more sham reform and offer only a prescription for further trouble."[2]

This dissertation has argued that those in and out of Congress who focus solely on changing, or "reforming," our nation's campaign finance laws are misguided. Reformers must look beyond the proposed changes in the law to the involvement of the federal courts in interpreting these laws. Little, other than political posturing by congressional reformers, is gained by the passing of laws that are going to be declared unconstitutional because lawmakers fail to consider the constitutionality of their actions. These same individuals, however, must also consider the impact of the regulatory agency in interpreting, implementing, and enforcing these laws. To be effective laws must be enforced, and enforcement requires creating a regulatory mechanism complete with the resources and regulatory structures necessary for the regulatory agency to accomplish its regulatory charge. But, given the constraints that are placed upon regulatory agencies, the enforcement efforts of the agency will likely always deviate from the ideal "norm" due to the presence of the federal courts and bargaining.

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[2] Ibid., p. 2.

Another aspect of political reality, however, must be considered: will changes in the law have the desired effect? That is to say, would abolishing political action committees or eliminating soft money contributions to political parties really stop the “corrosive” influence of money that some "reformers" are calling for? The answer to this question appears to be that it probably would not. The reason is simple: increased restrictions on contributions will likely drive the course of the money outside the campaign finance system. For instance, tightening up restrictions on political action committees will likely lead to more direct independent expenditures that do not fall under the regulation of the Federal Election Commission. Bans on contributions of soft money to national political parties will likely lead to increased soft money contributions to state political parties, and ultimately to more direct independent expenditures on the behalf of the contributors. The message is that piling more regulations upon an already overburdened regulatory regime does not equate to increased enforcement or a stemming of the flow and influence of money within the political system. Furthermore, increased regulation does not mean that the influence of money is going to be eliminated, just that the money may be spent or “expressed” in another manner. This raises significant questions for lawmakers: if regulation does not have a significant impact, and if there are legal means through which money will ultimately travel to its intended source, how effective can our nation’s campaign finance laws ever expect to be? And, if money is ultimately going to be conveyed through another legal manner, how extensive should our nation’s campaign finance laws really be?

What if Congress changed the law to conform to the belief that the First Amendment to the United States Constitution

guarantees each individual the right to contribute as much money to any candidate or candidates that individual chooses. Would unlimited contributions eliminate the need for a federal regulatory agency to handle the disclosure of these contributions or to enforce a disclosure process among those covered by the law? The answer is no, it would not. Whether that agency would be the Federal Election Commission does not really matter. What does matter is that some regulatory agency would be required to interpret, implement, and enforce federal law. And, this regulatory agency would be faced with the same constraints on its decision-making process.

So, where does this leave the reader? It leaves the reader with a case of perception is reality. The perception is that the Congress and the political establishment are concerned about campaign finance, but this is by design. The perception is also that some lawmakers genuinely care about the corrosive influence of money on elections and the policy process. In truth, some of these lawmakers may care about reforming the system. The reality, however, is that every lawmaker from the President on down to those in Congress was elected under the current system of rules. Each knows how the system operates, has little incentive to change it, and may even find personal political advantage in knowing that the system does not work well or works well for them. As a result, it is unlikely that present lawmakers will find the necessary votes in both houses of Congress, or the signature of a President, willing to reform the existing system. And, should “reforms” be enacted, one is still left with the practical reality that the reforms must survive legal challenges in our nation’s courts and be enforced.

Regulatory policy is a process operating on multiple levels, and involving multiple actors. Congress and the

President can work to enact an ideal policy "norm" only to have this "norm" altered by the federal courts. And, the manner in which the regulatory agency interprets, implements, and enforces federal law can impact the regulated constituency. In the case of federal campaign finance, many of those regulated by the Federal Election Commission are also Members of Congress. As a result, the actions of the regulatory agency also can impact the actions of the Congress, which can in turn feed back to impact the agency through the future actions of lawmakers. And, of course, any actions that are taken or not taken by any of the actors can impact the public's perception of the issue of federal campaign finance, thereby calling for either increased or decreased legislative action on the part of the Congress.

Regulatory agencies, such as the Federal Election Commission, must interpret, implement, and enforce the adjusted law within a constrained decision-making process. Because the Federal Election Commission's decision-making process is a constrained process, the policy outcomes will tend to deviate from the "norm" enacted by the Congress and President. As a result, agency actions are likely to fall short of public perceptions because these perceptions are based upon the public's understanding of the ideal policy "norm," not the practical realities facing agency regulators.

This dissertation has examined and explained the role of the Federal Election Commission as a regulatory agency, its decision-making processes, and the manner in which it has enforced federal campaign finance laws in the United States. Three objectives were fulfilled in this dissertation. First, the Federal Election Campaign Act (FECA), as amended, and the interpretation of this Act by the federal courts were examined. Second, the Federal Election Commission, as a

federal regulatory agency, and its decision-making processes were examined through the application of Matthew Holden, Jr.'s theory of regulatory decision-making. Third, single allegation profiles of Federal Election Commission enforcement under their prioritization process, and several years prior to the enactment of this prioritization process, were developed. Agency competence was also examined utilizing four factors identified by Kenneth J. Meier.

The research contained in this dissertation is significant and will serve as a departure point for future research into the Federal Election Commission, regulatory agency decision-making, and the topic of federal campaign finance. Future research into the FEC might focus on expanding from the present study's single allegation profiles into multiple allegation profiles. In this way, it might become possible to determine if certain combinations of allegations are more likely to spur action on the part of the Federal Election Commission than other types of allegations. Another avenue for future research might find scholars examining data on a year by year basis to determine if any trends are present on an annual basis. Since national primary and general elections in the United States do not typically occur on an annual basis, scholars may also want to consider focusing on multi-year allegation cycles. Another reason scholars may wish to focus on multi-year trends is that the data are based upon allegations contained in closed compliance cases that typically take several years for the agency to process. Lastly, scholars may wish to pursue a greater understanding of the relationship between the "enough" achieved through Matthew Holden, Jr.'s model of regulatory decision-making and the "enough" effectiveness necessary for a regulatory agency to be deemed "competent." Clearly, more

research into the operations of the Federal Election Commission, as a regulatory agency, its decision-making processes, and, in particular, its enforcement of our nation's federal campaign finance laws, needs to be pursued.