

NOTE

THE NEW ADVENT OF CAMPAIGN FINANCE: A DILEMMA REGULATING BLOCKCHAIN TECHNOLOGY AND CRYPTOCURRENCIES WHILE BALANCING FREE SPEECH INTERESTS

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With recent improvements and advances in technology, cryptocurrencies have become more mainstream. Through blockchain technology, cryptocurrencies have provided another avenue for campaign contributions in elections. In a political context, campaign contributions through cryptocurrencies are a largely unregulated and gray area of the law. In recent elections, more and more candidates have accepted donations through cryptocurrencies and although they serve many uses, there are concerns over cryptocurrencies regarding anonymity and corruption. On the other hand, cryptocurrencies can provide another avenue for free speech. Nonetheless, cryptocurrencies in a political campaign contribution context remain largely unregulated. This Note discusses why the United States federal government has a compelling state interest to regulate these technologies in order to prevent corruption, and how it can regulate these technologies while balancing free speech interests and ensuring that individuals have the freedom to donate to candidates through their own expression.

INTRODUCTION	356
I. BACKGROUND	358
A. <i>Blockchain Technology and Cryptocurrencies</i>	358
B. <i>Free Speech Considerations</i>	362
C. <i>Money in an Anonymous Political Context</i>	366

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D. The Rising Influence of Cryptocurrencies in Elections 369

II. WHY THE GOVERNMENT HAS A COMPELLING STATE INTEREST TO REGULATE BLOCKCHAIN TECHNOLOGY AND CRYPTOCURRENCIES FOR ELECTION CAMPAIGN FINANCE LAWS 371

A. Anonymous and Foreign Donations 371

B. Volatile Nature of Cryptocurrencies 373

C. Unregulated and Untraceable Transfer of Money 375

D. General Lack of Oversight of Cryptocurrencies 377

E. Unequal Playing Field 378

III. WHAT A PROPER REGULATION WOULD LOOK LIKE 379

A. Remove the Anonymity of Cryptocurrency Donations . 379

B. Only Accept Well-known and Established Cryptocurrencies 380

C. Record the Receipt of Transactions 381

D. Establish a Regulatory Agency to Oversee and Monitor Cryptocurrencies 382

IV. THE COUNTERARGUMENT AND WHY IT FAILS: WHOLLY UNREGULATED CRYPTOCURRENCIES DON'T BELONG IN POLITICAL DONATIONS 383

A. Technology Improves People's Lives 384

B. Cryptocurrency Donation is a Form of Expression ... 385

V. THE FUTURE OF CRYPTOCURRENCIES AND ELECTIONS 387

CONCLUSION 388

INTRODUCTION

Considered an outsider, 2020 presidential candidate Andrew Yang proposed novel ideas. In addition to championing policies on universal basic income and climate engineering, Yang created an entire campaign platform about blockchain technology and cryptocurrencies.¹ Unsurprisingly, his campaign announced that they would accept cryptocurrency donations. Yang “wholeheartedly believe[d] technology . . . outpaced the American government’s understanding of it.”² He planned to “promote legislation that provide[d] clarity on cryptocurrency-digital asset market

¹ See Jamie Redman, *Presidential Candidate Andrew Yang Discusses His Plan for Cryptocurrencies*, BITCOIN NEWS (Nov. 18, 2019), <https://news.bitcoin.com/presidential-candidate-andrew-yang-discusses-his-plan-for-cryptocurrencies/>. See generally Aylin Woodward, *Presidential Candidate Andrew Yang’s Climate Plan Includes Geoengineering, a Controversial Technique That He Says Could Lead to War*, BUS. INSIDER (Sept. 6, 2019), <https://www.businessinsider.com/andrew-yang-thinks-geoengineering-could-lead-to-war-2019-4> (outlining Andrew Yang’s general ideas on climate engineering).

² *Id.*

space . . . define what a token is and when it is a security and . . . clarify the tax implications of owning, selling, and trading digital assets.”³

However, his campaign faced legal hurdles from accepting cryptocurrency donations. The Federal Elections Commission maintains strict laws and regulations that require disclosure of who is donating to campaigns and forbid anonymous donations.⁴ In contrast, blockchain technology and cryptocurrencies provide anonymity.⁵ Hence, Yang’s campaign established a political action committee, Humanity Forward Fund, to accept cryptocurrency donations.⁶ However, Yang clarified that Humanity Forward Fund would refuse anonymous donations and only accept donations from mainstream cryptocurrencies such as Bitcoin and Ethereum.⁷

Although cryptocurrency supporters contended that cryptocurrency campaign contributions are secure, skeptics opined that cryptocurrencies can still ensure anonymity, that foul play could occur, and that Yang’s acceptance of cryptocurrency campaign contributions might just be a marketing ploy.⁸ On another note, there are legitimate concerns about cryptocurrency campaign contributions since they are largely unregulated in most states in which they are neither specifically permitted nor explicitly prohibited by law.⁹ In fact, many scholars suspected cryptocurrencies would increase corruption in political campaigns through anonymous donations and foreign interference.¹⁰ Some experts questioned whether regulating cryptocurrency campaign contributions was possible, citing free speech concerns.¹¹ Although blockchain technology and

³ *Id.*

⁴ See Cleveland Ferguson III, *Disclosure Requirements*, FIRST AMEND. ENCYCLOPEDIA (2009), <https://www.mtsu.edu/first-amendment/article/946/disclosure-requirements>.

⁵ See Rachel-Rose O’Leary, *We Have Entered the Age of Anonymous Crypto*, COIN DESK (Jan. 25, 2021, 3:22 PM), <https://www.coindesk.com/age-anonymous-crypto>.

⁶ See Helen Partz, *Andrew Yang’s PAC Accepting Donations in BTC Via Lightning Network*, COINTELEGRAPH (July 25, 2019), <https://cointelegraph.com/news/andrew-yangs-pac-accepting-donations-in-btc-via-lightning-network>.

⁷ See Andrius Vaškevičius, *2020 US Presidential Candidate Andrew Yang Accepts Crypto Donations*, TOSHI TIMES (Aug. 1, 2018), <https://toshitimes.com/2020-us-presidential-candidate-andrew-yang-accepts-crypto-donations/>.

⁸ See Talib Visram, *For Most 2020 Candidates, Bitcoin Campaign Contributions Are Too Much of a Headache*, FAST COMPANY (July 11, 2019), <https://www.fastcompany.com/90374706/2020-democrats-dont-see-the-payoff-in-accepting-bitcoin-funds>.

⁹ See Caleb Burns & Christopher White, *Regulations to the Moon! Campaign Finance in the Age of Cryptocurrencies*, JD SUPRA (May 19, 2022), <https://www.jdsupra.com/legalnews/regulations-to-the-moon-campaign-4987059/>.

¹⁰ See Kristian Hernández, *How Cryptocurrency is Sneaking into State Elections*, CTR. PUB. INTEGRITY (Oct. 26, 2018, 8:20 PM), <https://publicintegrity.org/politics/state-politics/how-cryptocurrency-is-sneaking-into-state-elections/>.

¹¹ See Justin S. Wales & Richard J. Ovelmen, *Bitcoin is Speech: Notes Toward Developing the Conceptual Contours of Its Protection Under the First Amendment*, 74 U. MIAMI L. REV. 204, 229, 251 (2019).

cryptocurrencies technically are avenues for free speech, the United States federal government has a compelling state interest to heavily regulate these technologies in order to prevent corruption, while also balancing free speech interests and ensuring that individuals have the freedom to donate to candidates through their own expression.

With cryptocurrencies here to stay, the government has an interest in regulating cryptocurrencies in the political contribution context. This Note will first describe the background of what blockchain ledgers and cryptocurrencies are. It will then discuss how they relate to free speech. Next, this Note will discuss the reasons why the government has a compelling state interest to regulate blockchain technology and cryptocurrencies in a political contribution context. Then, this Note will outline a proposed regulatory framework, with possible arguments against it, and answers to those. Finally, this Note will discuss what future elections might look like with cryptocurrencies becoming mainstream.

I. BACKGROUND

A. *Blockchain Technology and Cryptocurrencies*

A blockchain is a specific type of database vastly different from other databases.¹² A database is a complex and organized collection of information stored electronically on a computer and uses formal design techniques.¹³ Databases run on software that comprises and interacts with end users, applications, and data.¹⁴ Some information technologists organize databases with rows and columns in spreadsheets, while other information technologists use structured query languages to organize databases.¹⁵ In the 2000s, a new variety of databases known as NoSQL databases emerged, which later led to the development of more complex database systems.¹⁶

A blockchain is different from other databases in how it stores information. In a blockchain, literal blocks chain together stores of information, hence the name blockchain.¹⁷ When new data arrives, the blockchain database immediately enters the data into a new block.¹⁸ The

¹² See Marco Iansiti & Karim R. Lakhani, *The Truth About Blockchain*, HARV. BUS. REV. (Feb. 2017), <https://hbr.org/2017/01/the-truth-about-blockchain>.

¹³ See *What is a Database (And Why Do You Need One)?*, FOR THE RECORD (Dec. 15, 2020), <https://blog.airtable.com/what-is-a-database/>.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See Andreas Buckenhofer, *NOSQL, NEWSQL, CLOUD-NATIVE DATABASES*, BUCKENHOFER DATA BLOG (Feb. 9, 2019), <https://www.buckenhofer.com/2019/02/nosql-newsql-cloud-native-databases/>.

¹⁷ See Maryanne Murray, *Blockchain Explained*, REUTERS (June 15, 2018), <http://graphics.reuters.com/TECHNOLOGY-BLOCKCHAIN/010070P11GN/index.html>.

¹⁸ See *id.*

blockchain database then connects this new block into a chain with previous blocks in consecutive chronological order.¹⁹ Although a blockchain can serve a variety of different purposes, individuals and entities mostly use blockchain as a ledger for financial transactions.²⁰ A blockchain can transfer cryptocurrencies because it is decentralized.²¹ Because blockchain is decentralized, no one person, entity, group, or corporation has control over the entire blockchain ledger itself.²²

A blockchain is also different from other databases because it is completely decentralized and is not privately owned or controlled by anyone.²³ Thus, no one can alter or reverse the information inside these blocks. Hence, a blockchain can serve as a digital record of transactions and as a mechanism to transfer cryptocurrencies.²⁴ A blockchain is also useful because one can transfer cryptocurrencies without added transactional fees.²⁵ Several private companies discussed creating their own private blockchain, but this is not possible.²⁶ A blockchain is decentralized and open-source, which makes it public and outside of anyone's control.²⁷

Cryptocurrencies are a form of electronic currency secured through cryptography.²⁸ The digital aspects and cryptography define cryptocurrencies' essential features, and thus individuals cannot counterfeit or double spend cryptocurrencies.²⁹ The decentralized network that enables blockchain supports cryptocurrencies.³⁰ A disparate network of computers and a distributed ledger further support and enhance cryptocurrencies.³¹ In 2008, Satoshi Nakamoto developed the first cryptocurrency,

¹⁹ See *id.*

²⁰ See *How the Blockchain Will Impact the Financial Sector*, KNOWLEDGE @ WHARTON (Nov. 16, 2018), <https://knowledge.wharton.upenn.edu/article/blockchain-will-impact-financial-sector/>.

²¹ See Nathaniel Popper, *What is the Blockchain? Explaining the Tech Behind Cryptocurrencies*, N.Y. TIMES (June 27, 2018), <https://www.nytimes.com/2018/06/27/business/dealbook/blockchains-guide-information.html>.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See generally *id.* (supporting an inference that cryptocurrencies often lack transactional fees due to the communal nature of a blockchain).

²⁶ See Nikolai Hampton, *Understanding the Blockchain Hype: Why Much of It Is Nothing More Than Snake Oil and Spin*, COMPUT. WORLD (Sept. 5, 2016, 9:00 AM), <https://www2.computerworld.com.au/article/606253/understanding-blockchain-hype-why-much-of-it-nothing-more-than-snake-oil-spin/>.

²⁷ See *id.*

²⁸ See Yessi Bello Perez, *The Differences Between Cryptocurrencies, Virtual, and Digital Currencies*, NEXT WEB (Feb. 19, 2019), <https://thenextweb.com/news/the-differences-between-cryptocurrencies-virtual-and-digital-currencies>.

²⁹ See *id.*

³⁰ See Popper, *supra* note 21.

³¹ See *id.*

Bitcoin, which is the most popular cryptocurrency today.³² He also developed the first blockchain ledger that same year in order to transfer Bitcoin.³³ However, Bitcoin is not the first attempt at creating a cryptocurrency. During the 1980s, there were other attempts to create a cryptocurrency.³⁴ Those attempts failed because those currencies relied on a centralized authority, such as a government currency, or were backed by another store of value, like gold.³⁵ Today's cryptocurrencies do not rely on a centralized authority and instead are supported by a decentralized network from blockchain technology.³⁶

Currently, Bitcoin has a total market value of \$927 billion.³⁷ Bitcoin comprises 46% of the total value of all cryptocurrencies, which is around \$2 trillion.³⁸ Today, there are thousands of other cryptocurrencies in existence such as Litecoin, Ethereum, and Namecoin.³⁹ Some cryptocurrencies copied functions from Bitcoin while others are entirely new. For example, in 2011, creators launched Namecoin to bypass and circumvent internet censorship through using a decentralized domain name system.⁴⁰ Finally, just like blockchain technology, no one entity, individual, or private company owns an entire cryptocurrency.⁴¹

Because today's cryptocurrencies are decentralized, they avoided the problems that previous cryptocurrency attempts faced. Decentralization removes the requirement of a central clearing house to validate transactions, which previous attempts at cryptocurrencies needed.⁴² Today's cryptocurrencies are autonomous of a central bank through using a system of cryptographic proof, which comes from a validation of trans-

³² See *id.*

³³ See *Where Did Blockchain Come From?*, BITRATES, <https://www.bitrates.com/guides/blockchain/where-did-blockchain-come-from>.

³⁴ See generally ANDREAS M. ANTONOPOULOS, *MASTERING BITCOIN: PROGRAMMING THE OPEN BLOCKCHAIN* (2d. ed. 2017).

³⁵ See *id.* at 3.

³⁶ See Popper, *supra* note 21.

³⁷ See Daren Fonda, *Bitcoin is Hitting the Mainstream Even as Its Environmental Toll Mounts*, BARRON'S (Mar. 4, 2021, 1:04 PM), <https://www.barrons.com/articles/bitcoin-is-hitting-the-mainstream-even-as-its-environmental-toll-mounts-51614881052>.

³⁸ See Joanna Ossinger, *Ether Hits \$3,000 as Bitcoin's Crypto Dominance Declines*, BLOOMBERG (May 2, 2021, 10:13 PM), <https://www.bloomberg.com/news/articles/2021-05-03/bitcoin-s-crypto-dominance-falls-as-ether-and-other-coins-soar>. See generally Chris Morris, *Crypto Market Cap is Once Again Above \$2 trillion*, FORTUNE MAG. (Mar. 2, 2022), <https://fortune.com/2022/03/02/crypto-market-cap-2-trillion/> (discussing that as of March 2022, the overall market capitalization of cryptocurrencies has crossed the \$2 trillion mark).

³⁹ See Rosemary Bigmore, *A Decade of Cryptocurrency: From Bitcoin to Mining Chips*, TELEGRAPH (May 25, 2018, 3:30 PM), <https://www.telegraph.co.uk/technology/digital-money/the-history-of-cryptocurrency/>.

⁴⁰ See *What is Namecoin (NMC)?*, BIT2ME ACADEMY, <https://academy.bit2me.com/en/what-is-namecoin-nmc-cryptocurrency/>.

⁴¹ See Popper, *supra* note 21.

⁴² See ANTONOPOULOS, *supra* note 34, at 3.

actions, referred to as a “proof of work” by cryptocurrency users.⁴³ “Proof of work” is an idea that in order for cryptocurrencies to exist on a decentralized network, the users must validate their transactions, which is done through a public ledger available for all to see.⁴⁴ Chains of blocks then group these transactions, which users can validate through solving difficult computer algorithms.⁴⁵ Once the algorithm is solved, the block is published and available for all users on the network to view.⁴⁶ When the block is published, it links to the previous blocks and hence creates a chain of blocks that shows a history of the transactions.⁴⁷ This verification process is known as mining, and users who use their computers to solve the computer algorithms are known as miners.⁴⁸

Users can obtain ownership of a cryptocurrency through either a transfer of transactions or through mining the cryptocurrency.⁴⁹ It is free to create an account to purchase cryptocurrency and one does not need to use their real name.⁵⁰ Cryptocurrencies can then be purchased, exchanged, or sold on various other specialized exchanges for currency, regardless of whether it is government currency or other cryptocurrency.⁵¹ On the other hand, a miner obtains cryptocurrency through rewards and validation, which is how more cryptocurrency enters circulation.⁵² When one purchases cryptocurrency, it is stored in a “wallet,” which are files that store account information, transaction records, and the personal private key needed to spend or transfer cryptocurrency.⁵³ The personal private key is a system in which users can verify that transactions were sent by one party and received by the other.⁵⁴

Since there is no central authority that issues cryptocurrencies, cryptocurrencies exist outside of government control and hence might be immune from governmental interference or manipulation.⁵⁵ Encryption techniques and algorithms further safeguard and sustain cryptocurrencies and maintain their secrecy and independence from government interfer-

⁴³ See *id.* at 4 (citing Satoshi Nakamoto, *Bitcoin: A Peer-To-Peer Electronic Cash System* (2008), <https://bitcoin.org/bitcoin.pdf>).

⁴⁴ See *id.*

⁴⁵ See Rainer Böhme et al., *Bitcoin: Economics, Technology, and Governance*, 29 J. ECON. PERSPECTIVES 213, 217 (2015).

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See generally ANTONOPOULOS, *supra* note 34, at 9, 11.

⁵⁰ See Böhme, *supra* note 45, at 213–14.

⁵¹ See *id.* at 220.

⁵² See *id.* at 218.

⁵³ *Id.* at 220.

⁵⁴ See *id.* at 216.

⁵⁵ See Dirk Baur, *The Blockchain Does Not Eliminate the Need for Trust*, CONVERSATION (Nov. 15, 2017, 8:26 PM), <https://theconversation.com/the-blockchain-does-not-eliminate-the-need-for-trust-86481>.

ence.⁵⁶ Because of how a blockchain is set up, cryptocurrencies hold the potential of making it easier to transfer funds across from one party to another, which is radically different from alternate forms of technology used to transfer funds.⁵⁷

The anonymity of cryptocurrencies fueled concerns about their use. Criminals have used cryptocurrencies for a number of illegal activities, such as money laundering and tax evasion.⁵⁸ Others have taken advantage of their volatile exchange rates for currency exchange and manipulation.⁵⁹ But, advocates of cryptocurrencies argue that their anonymity is why cryptocurrencies are important. Many advocates claim that cryptocurrencies protect one's privacy, which is useful for whistleblowers and activists in authoritarian regimes.⁶⁰ Thus, cryptocurrencies provide a plethora of benefits while also a number of concerns.

Many individuals are concerned about cryptocurrency campaign contributions.⁶¹ The Federal Election Commission published an opinion in 2014 concluding that campaigns may accept cryptocurrency donations and purchase cryptocurrencies from funds in their campaign depository for investment purposes but cannot make disbursements using purchased cryptocurrency.⁶² But, because of their novelty, very few laws discuss cryptocurrency contributions.⁶³ States differ on how to regulate cryptocurrency campaign contributions.⁶⁴ Thus, this has created a gray area in campaign finance law and there is a plausible threat that criminals may use cryptocurrencies to circumvent campaign finance laws.

B. *Free Speech Considerations*

In *Citizens United v. Federal Election Commission*, the Supreme Court ruled that the First Amendment prohibits the government from re-

⁵⁶ See Kyle Torpey, *U.S. Lawmakers Are Realizing They Can't Ban Bitcoin*, FORBES (July 30, 2019, 6:04 PM), <https://www.forbes.com/sites/ktorpey/2019/07/30/us-lawmakers-are-realizing-they-cant-ban-bitcoin/?sh=5db072ea3e31>.

⁵⁷ See Paul Shumsky, *How Blockchain is Going to Change the Remittance in 2020*, FINEXTRA (Jan. 24, 2020), <https://www.finextra.com/blogposting/18367/how-blockchain-is-going-to-change-the-remittance-in-2020>.

⁵⁸ See generally Sean Foley, Jonathan R. Karlsen & Tålís J. Putniòs, *Sex, Drugs, and Bitcoin: How Much Illegal Activity Is Financed Through Cryptocurrencies?*, 32 REV. FIN. STUD. 1518 (2019).

⁵⁹ See *Healthy Volatility and Its Implications for Crypto Markets*, CRYPTOEDIA (June 21, 2021), <https://www.gemini.com/cryptopedia/volatility-index-crypto-market-price#section-understanding-healthy-market-volatility>.

⁶⁰ See Alex Gladstein, *Why Bitcoin Matters for Freedom*, TIME (Dec. 28, 2018, 4:48 AM), <https://time.com/5486673/bitcoin-venezuela-authoritarian/>.

⁶¹ See Fed. Election Comm'n, Advisory Op. 2014-02 (May 8, 2014), <https://www.fec.gov/files/legal/aos/2014-02/2014-02.pdf>. See also Hernández, *supra* note 10.

⁶² See FEC Advisory Op. 2014-02 (May 8, 2014), <https://www.fec.gov/files/legal/aos/2014-02/2014-02.pdf>.

⁶³ See *id.*

⁶⁴ See *id.*

stricting independent expenditures for political communications by corporations and other similar entity associations.⁶⁵ The Court ruled that corporations have First Amendment rights and that campaign contributions and independent expenditures for political communications such as radio advertisements, messages, and political documentaries all fall within the confines of the First Amendment.⁶⁶ *Citizens United* reversed a long line of cases that let the government regulate political contributions—even though the Court declared that political contributions were speech protected under the First Amendment—because of a government interest in preventing corruption.⁶⁷

In contrast to arguments about whether money is free speech, blockchain ledgers and cryptocurrencies can serve as avenues for free speech. First, large social networking websites, such as Facebook and Twitter, allow individuals to communicate and send messages to others, but these websites have rules in which users must agree to abide by their terms and conditions.⁶⁸ For example, one cannot publish extremist hate speech on Twitter or publish outright false news on Facebook.⁶⁹ Additionally, individual journalists reported that Facebook removed and censored far left extremist anarchist groups.⁷⁰ Courts have also rejected attempts to apply the First Amendment to Facebook and Twitter in the past.⁷¹ In *Freedom Watch, Inc. v. Google, Inc.*, the Court rejected the plaintiffs' First Amendment arguments because Facebook and Twitter are not state actors but simply private businesses with social media networks available for the public.⁷² In *Young v. Facebook, Inc.*, the Court dismissed the plaintiff's claim against Facebook for violating the First

⁶⁵ See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365 (2010).

⁶⁶ See *id.* at 342, 350.

⁶⁷ See *id.*

⁶⁸ See Glenn Greenwald, *Facebook and Twitter Cross a Line Far More Dangerous Than What They Censor*, INTERCEPT (Oct. 15, 2020, 7:52 PM), <https://theintercept.com/2020/10/15/facebook-and-twitter-cross-a-line-far-more-dangerous-than-what-they-censor/>. See also Facebook Hate Speech Policy (2022), <https://transparency.fb.com/policies/community-standards/hate-speech/> (outlining that certain forms of hate speech are not allowed on their site); Facebook Misinformation Policy (2022), <https://transparency.fb.com/policies/community-standards/misinformation> (outlining that some forms of false news are not allowed on their site); Twitter Hateful Conduct Policy (2022), <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>; Twitter Manipulated Media Policy (2022), <https://help.twitter.com/en/rules-and-policies/manipulated-media>.

⁶⁹ See Facebook Hate Speech Policy (2022), *supra* note 68; Facebook Misinformation Policy (2022), *supra* note 68; Twitter Hateful Conduct Policy (2022), *supra* note 68; Twitter Manipulated Media Policy (2022), *supra* note 68.

⁷⁰ See Ali Breland, *Anarchist Activists Say Facebook Banned Them to Placate the Right*, MOTHER JONES (Sept. 2, 2020), <https://www.motherjones.com/politics/2020/09/facebook-anarchist-ban/>.

⁷¹ See *generally* *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30 (D.D.C. 2019).

⁷² See *id.*

Amendment because Facebook is not a state actor.⁷³ Because social media companies are private businesses and not state actors, they can censor information.⁷⁴

On the other hand, one can send any type of encrypted message without the possibility of censorship through blockchain technology.⁷⁵ A blockchain cannot limit or censor what one can or cannot post.⁷⁶ This is because a blockchain is completely decentralized and is not controlled or owned by any entity.⁷⁷ Indeed, the creators of cryptocurrencies and blockchain technology invented this technology with the goals of openness, transparency, and decentralization in response to the growing technological and privacy concerns regarding government surveillance and censorship.⁷⁸ In some ways, a blockchain is a Pandora's Box in that it cannot be controlled, censored, monitored, or shut down.⁷⁹ Moreover, many cryptocurrency websites spread information about these currencies and do not censor users.⁸⁰ For example, Cryptogeek.info, an online review platform that covers different types of cryptocurrencies, is entirely uncensored and allows anyone to post any type of content on their discussion boards.⁸¹ While it is possible that websites such as Cryptogeek.info could censor their information, this is not possible with a blockchain.⁸²

Blockchain technology is drastically different from social media networking sites. First, social media networking websites are owned by private corporations.⁸³ A blockchain is not owned or controlled by anyone.⁸⁴ Thus, while a private company such as Facebook or Twitter can censor and monitor information on their platforms, individuals and enti-

⁷³ See *Young v. Facebook, Inc.*, No. 10-cv-03579, 2010 WL 4269304, *3 (N.D. Cal. Oct. 25, 2010).

⁷⁴ See *Freedom Watch, Inc.*, 368 F. Supp. 3d at 41.

⁷⁵ See Mick Hagen, *Blockchain Could Be the Savior of Free Speech*, FORTUNE (July 26, 2018, 4:52 PM), <https://fortune.com/2018/07/26/blockchain-technology-cryptocurrency-ethereum-censorship-free-speech/>.

⁷⁶ See *id.*

⁷⁷ See Böhme, *supra* note 45, at 219.

⁷⁸ See *Blockchain and Free Speech are Inseparable, Says Bert Kozma*, COIN TELEGRAPH (Feb. 4, 2021), <https://cointelegraph.com/press-releases/blockchain-and-free-speech-are-inseparable-says-bert-kozma> [hereinafter *Blockchain and Free Speech are Inseparable*].

⁷⁹ See Böhme, *supra* note 45, at 214.

⁸⁰ See *Blockchain and Free Speech are Inseparable, supra* note 78.

⁸¹ See *id.*

⁸² See Gladstein, *supra* note 60.

⁸³ See Ben Gilbert, *Facebook Is Changing Its Logo to Make Sure Users Know It Owns Instagram and WhatsApp*, INC. (Nov. 5, 2019), <https://www.inc.com/business-insider/facebook-new-logo-instagram-whatsapp-parent-company.html>.

⁸⁴ See Marco Iansiti & Karim R. Lakhani, *The Truth About Blockchain: It Will Take Years to Transform Business, But the Journey Begins Now*, HARV. BUS. REV. 118, 125 (2017).

ties cannot censor or control a blockchain in anyway.⁸⁵ It just exists. To clarify, blockchain is a technology medium, similar to the internet. But, unlike the internet which relies on internet service providers, cloud services, and centralized networks, blockchain is completely decentralized. Today, there are many governments and businesses that use censorship software and technology to monitor people's online activity and prohibit access to certain content.⁸⁶ But, a blockchain allows one to circumvent these surveillance thresholds from businesses or the government.⁸⁷ Because a blockchain is immutable, third parties cannot alter the information in a blockchain.⁸⁸ For example, the government, hackers, or others cannot interfere, monitor, or surveil blockchain technology.⁸⁹ Thus, blockchain technology provides a way to shepherd messages while avoiding censorship or surveillance.

Regarding cryptocurrency adoption, blockchain technology can safeguard individuals' assets from government encroachment. If a government decides to blacklist an individual's financial transactions because of their political views, the individual can then transfer their wealth through a blockchain, and thus the government loses the ability to threaten wealth control or financial exclusion.⁹⁰ This is useful for persecuted individuals attempting to flee oppressive regimes or political dissidents whom a government attempts to silence.⁹¹ In fact, the specific structure and unique capabilities of blockchain provide an ability to air grievances without surveillance or censorship.⁹²

In China, when activists published blogposts about their #Metoo movement, the Chinese government deleted these blogs and arrested activists.⁹³ Thus, these activists turned to blockchain technology to spread their message and publish their articles.⁹⁴ Numerous activists used the Ethereum blockchain to spread their message.⁹⁵ Activists transferred

⁸⁵ See Adedayo Akala, *Don't Censor! Stop the Hoaxes! Facebook, Twitter Face a Catch-22*, NPR (Oct. 16, 2020, 5:26 PM), <https://www.npr.org/2020/10/16/924625825/dont-censor-stop-the-hoaxes-facebook-twitter-face-a-catch-22>; Iansiti & Lakhani, *supra* note 84, at 125.

⁸⁶ See Gladstein, *supra* note 60.

⁸⁷ See *id.*

⁸⁸ See Kevin Doubleday, *Blockchain Immutability — Why Does It Matter?*, MEDIUM (Nov. 27, 2018), <https://medium.com/fluree/immutability-and-the-enterprise-an-immense-value-proposition-98cd3bf900b1>.

⁸⁹ See Iansiti & Lakhani, *supra* note 84, at 125.

⁹⁰ See Mick Hagen, *Blockchain Could Be the Savior of Free Speech*, FORTUNE (July 26, 2018, 4:52 PM), <https://fortune.com/2018/07/26/blockchain-technology-cryptocurrency-ethereum-censorship-free-speech/>.

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ See *id.*

small amounts of Ethereum to one another through the blockchain but attached written memos in each of their transactions and imprinted their stories on a globally managed ledger available for anyone to view.⁹⁶ The blockchain ledger attached each chronological consecutive part of their story in blocks.⁹⁷ This blockchain technology provided two safeguard mechanisms for the Chinese activists. First, the Chinese activists were able to send and publish their message. Second, they were able to hide their identity because of the anonymity in the Ethereum blockchain.⁹⁸ Consequently, blockchain technology provided a way for Chinese activists to counteract government censorship.⁹⁹

Furthermore, a blockchain is vastly different from other forms of communication technology. Most internet and technological communications rely upon on internet service providers or cloud services.¹⁰⁰ In the past, oppressive governments monitored and surveilled applications, such as WhatsApp or Signal, through shutting down internet service providers and cloud services.¹⁰¹ A blockchain is different because it doesn't rely on cloud services or internet service providers.¹⁰² Thus, the government can't step in and shut down blockchain.¹⁰³ Hence, because a blockchain is entirely encrypted, cannot be censored, and can circumvent surveillance, blockchain technology is an avenue for free speech.

C. *Money in an Anonymous Political Context*

Although the government should ensure a fair election process and safeguard voters' interests, money is a bit peculiar. Many people are comfortable with other anonymous political contexts yet are uncomfortable when money is introduced.¹⁰⁴ Indeed, our society allows anonymous speech in almost all contexts and allows the media to publish stories

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See *#MeToo Message*, NEXTBIGWHAT (Apr. 23, 2018), <https://nextbigwhat.com/china-metoo-blockchain/>. See also Jia Ao, *How a Chinese Activist Used Blockchain to Make a #MeToo Letter Undeletable* (Apr. 27, 2018), <https://www.rfa.org/english/news/china/blockchain-04272018110005.html> (mentioning that an anonymous user stamped her account of the incident onto the Ethereum blockchain). See also Dan Robitzski, "Transparent" Blockchain Is Pretty Darn Useful For Sharing Private Info (Apr. 25, 2018), <https://futurism.com/transparent-blockchain-private-china> (mentioning that an open letter to China's Peking University was anonymously uploaded to the Ethereum blockchain).

⁹⁹ See Hagen, *supra* note 90.

¹⁰⁰ See *id.*

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ See *Americans' Views on Money in Politics*, N.Y. TIMES (June 2, 2015), <https://www.nytimes.com/interactive/2015/06/02/us/politics/money-in-politics-poll.html>; Michael Beckel, *What Is 'Dark Money' and Why Do So Many People Think It's Bad?*, NBC NEWS (Jan. 20, 2016, 5:02 AM), <https://www.nbcnews.com/news/us-news/what-dark-money-why-do-so-many-people-think-it-n499731>.

from anonymous writers about candidates.¹⁰⁵ Our government allows individual voters to attend a candidate's rally without publishing who each of the attendees are.¹⁰⁶ Our own individual votes and ballots are private.¹⁰⁷ Society allows political speech in an anonymous context, but there is a level of queasiness when money is involved.¹⁰⁸ Why is society uneasy when monetary donations are anonymous? Our government does not ban cash itself or regulate how individuals can spend their money, but the government does regulate how much money a campaign can spend and mandates disclosure of donations.¹⁰⁹ Why is there this difference in regard to anonymity when it concerns money and elections?

I believe this uneasiness of money in an anonymous political context stems from concerns regarding corruption.¹¹⁰ But, one must tread with caution while balancing these concerns with free speech interests.¹¹¹ One could argue that excessive campaign contributions can be a form of bribery for candidates.¹¹² The integrity of our democratic system should rest on individual American voters, rather than on corporations or a handful of extremely wealthy individuals deciding election outcomes.¹¹³ But, the government policing political speech and campaign contribu-

¹⁰⁵ See Jeffrey Gottfried & Mason Walker, *Most Americans See a Place for Anonymous Sources in News Stories, But Not All the Time*, PEW RSCH. CTR. (Oct. 9, 2020), <https://www.pewresearch.org/fact-tank/2020/10/09/most-americans-see-a-place-for-anonymous-sources-in-news-stories-but-not-all-the-time/>.

¹⁰⁶ See Anita Kumar, *Are Trump's MAGA Rallies a Hotbed of 'Hidden Voters'?*, POLITICO (Mar. 8, 2020, 7:00 AM), <https://www.politico.com/news/2020/03/08/trump-2020-campaign-hidden-voters-123382>.

¹⁰⁷ See Meta S. Brown, *Voter Data: What's Public, What's Private.*, FORBES (Dec. 28, 2015, 9:30 PM), <https://www.forbes.com/sites/metabrown/2015/12/28/voter-data-whats-public-whats-private/?sh=6b731eab1591>.

¹⁰⁸ See Jessica Melugin & Clyde Wayne Crews, *Protecting Publius: Online Anonymity is Critical for Protecting Freedom to Dissent*, USA TODAY (Feb. 25, 2021, 8:00 AM), <https://www.usatoday.com/story/opinion/2021/02/25/importance-protecting-anonymous-speech-online-facebook-twitter-column/4386076001/>; Beckel, *supra* note 104.

¹⁰⁹ See McKenzie Sadeghi, *Fact Check: No US Law Requires Businesses To Take Cash, But Local Laws May Mandate It*, USA TODAY (Sept. 16, 2020, 2:18 PM), <https://www.usatoday.com/story/news/factcheck/2020/09/16/fact-check-cashless-businesses-banned-only-some-local-state-laws/3330804001/>; *Economic Freedom Basics*, FRASER INST., <https://www.fraserinstitute.org/economic-freedom/economic-freedom-basics>; *Understanding Ways to Support Federal Candidates*, FED. ELECTION COMM'N, <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/>; *Individual Contributions*, FED. ELECTION COMM'N, <https://www.fec.gov/introduction-campaign-finance/how-to-research-public-records/individual-contributions/>.

¹¹⁰ See Jeffrey Milyo, *Do Campaign Contributions Corrupt Politics?*, INDEP. INST. (Oct. 25, 1999), <https://www.independent.org/news/article.asp?id=448>.

¹¹¹ See *id.*

¹¹² See *id.*

¹¹³ See Tim Lau, *Citizens United Explained*, BRENNAN CTR. FOR JUST. (Dec. 12, 2019), <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained> (discussing how following the *Citizens United* ruling, corporations and wealthy donors have significantly more influence on elections). See Libby Watson, *Rich Americans are Interfering in Our Elections*, NEW REPUBLIC (Nov. 8, 2019), <https://newrepublic.com/article/155664/rich-ameri>

tions may seem dystopian.¹¹⁴ Perhaps it is a necessary evil until a new system is developed.

There is also a question of comfortableness. Some people might not be uncomfortable if charity groups, such as animal rights organizations or children's welfare societies could donate to campaigns, even though charity groups are prohibited from donating to campaigns.¹¹⁵ But, many people are uncomfortable when large corporations donate to a campaign.¹¹⁶ After all, the point of a corporation is to create a profit.¹¹⁷ When a corporation exercises significant influence over politicians, some individuals may feel uncomfortable.¹¹⁸ Most people want to know where their candidates' money originates from.¹¹⁹ They want to know whether candidates represent the people or whether corporations "bought" the candidates.¹²⁰ In essence, many people are fine with anonymity if it protects privacy.¹²¹ But, when we question the main source of anonymous monetary contributions, we then wonder whether that politician represents the people or represents different interests.¹²² This anonymity about monetary contributions and actual representation makes many individuals uncomfortable.¹²³

One could argue that disclosure of campaign contributions is a constitutional violation since it is an invasion of privacy.¹²⁴ The Supreme Court ruled that privacy is a constitutionally protected right in *Griswold v. Connecticut* when Justice William O. Douglas outlined his penumbras argument that privacy was necessary in order to reach, uphold, and pro-

cans-interfering-elections (providing an example of Amazon interfering and influencing a city council election in Seattle).

¹¹⁴ See Melugin & Crews, *supra* note 108.

¹¹⁵ See *Who Can and Can't Contribute*, FED. ELECTION COMM'N, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute/>.

¹¹⁶ See Bradley Jones, *Most Americans Want to Limit Campaign Spending. Say Big Donors Have Greater Political Influence*, PEW RSCH. CTR. (May 8, 2018), <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>; *Getting Big Money Out of Politics*, WARREN DEMOCRATS, <https://elizabethwarren.com/plans/campaign-finance-reform>.

¹¹⁷ See Donald J. Kochan, *The Purpose of a Corporation Is to Seek Profits, Not Popularity*, HILL (Aug. 19, 2021, 2:30 PM), <https://thehill.com/opinion/finance/568595-he-purpose-of-the-corporation-is-to-seek-profits-not-popularity>.

¹¹⁸ See Jones, *supra* note 116; *Getting Big Money Out of Politics*, *supra* note 116.

¹¹⁹ See Beckel, *supra* note 104.

¹²⁰ See *id.*

¹²¹ See Lee Raine et al., *Anonymity, Privacy, and Security Online*, PEW RSCH. CTR. (Sept. 5, 2013), <https://www.pewresearch.org/internet/2013/09/05/anonymity-privacy-and-security-online/>.

¹²² See Beckel, *supra* note 104.

¹²³ See *id.*

¹²⁴ See Lee E. Goodman, *The First Amendment Right to Political Privacy, Chapter 6 – Campaign Finance and Other Very Public Exceptions to Privacy*, WILEY (Sept. 2019), https://www.wiley.law/newsletter-Mar_2019_PIF_The_First_Amendment_Right_to_Political_Privacy_Chapter_6_Campaign_Finance_and_Other_Very_Public_Exceptions_to_Privacy.

tect the First, Third, Fourth, and Fifth Amendments.¹²⁵ In an era of increasing government surveillance, society has normalized a lack of privacy.¹²⁶ Intelligence agencies increasingly monitor our technology usage and even know our private internet browsing habits.¹²⁷ One could argue that these initiatives caused a detrimental effect for society in that candidates are now judged for who their financial supporters are rather than the ideas they champion and uphold.¹²⁸ But, there is doubt about whether disclosure violates the First Amendment.¹²⁹

In *NAACP v. Alabama*, the Supreme Court ruled that the First Amendment protected the NAACP from disclosing its membership list.¹³⁰ But, in *Buckley v. Valeo*, the Supreme Court upheld disclosure provisions and ruled that limits on campaign contributions were necessary to prevent corruption.¹³¹ While forcing campaign contribution disclosures may touch upon privacy concerns, perhaps this is a way to combat corruption in politics and limit the influence of large corporations on politicians.¹³² But, these attempts at preventing corruption may be nullified as cryptocurrencies and blockchain technology become more mainstream. Few regulations concerning cryptocurrency campaign contributions exist and this is still a gray area of the law.¹³³

D. *The Rising Influence of Cryptocurrencies in Elections*

Finally, in recent elections, a significant number of candidates accepted cryptocurrency campaign donations. In 2014, Andrew Hemingway accepted Bitcoin donations to fund his unsuccessful race for the Governor's seat in New Hampshire.¹³⁴ Congressional Representative Jared Polis accepted Bitcoin donations during his 2014 re-election campaign.¹³⁵ Dan Elder, a Missouri State Representative, funded his entire

¹²⁵ See generally *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

¹²⁶ See Neil C. Hughes, *The FBI Monitoring Your Browsing History Without a Warrant Might Just Be the Beginning*, CYBERNEWS (May 20, 2020), <https://cybernews.com/news/the-fbi-monitoring-your-browsing-history-without-a-warrant-might-just-be-the-beginning/>.

¹²⁷ See *id.* See also Janus Rose, *Congress Has No Idea How Much Web Browsing Data the FBI Collects*, VICE NEWS (May 21, 2020), <https://www.vice.com/en/article/ep4d97/congress-has-no-idea-how-much-web-browsing-data-the-fbi-collects>.

¹²⁸ See Bradley A. Smith, *In Defense of Political Anonymity*, CITY J. MAG. (2010), <https://www.city-journal.org/html/defense-political-anonymity-13257.html>.

¹²⁹ See *id.*

¹³⁰ See *NAACP v. Alabama*, 357 U.S. 449, 462–63 (1958).

¹³¹ See *Buckley v. Valeo*, 424 U.S. 1, 44–45 (1976).

¹³² See *id.* at 28–29.

¹³³ See generally Böhme, *supra* note 45.

¹³⁴ See Kelly Kaler, *Cryptocurrency Candidates: Bitcoin Enters Politics*, CNBC (Aug. 8, 2014, 2:04 PM), <https://www.cnbc.com/2014/08/08/cryptocurrency-candidates-bitcoin-enters-politics.html>.

¹³⁵ See Alex Fitzpatrick, *Colorado Congressman Seizes on New Bitcoin Rules*, TIME (May 9, 2014, 10:16 AM), <https://time.com/93765/jared-polis-bitcoin/>.

2016 campaign on cryptocurrency donations.¹³⁶ Brian Forde, who ran for California's 45th Congressional District in the House of Representatives, raised 16 percent of his campaign contributions through Bitcoin donations.¹³⁷ Austin Petersen, who ran for the U.S. Senate in the Republican Primary in Missouri, was forced to give up \$130,000 in Bitcoins because those contributions exceeded campaign limits.¹³⁸ In 2016, Rand Paul became the first presidential candidate to accept cryptocurrency donations.¹³⁹ Then, in 2020, Andrew Yang became the first presidential candidate to dedicate an entire campaign platform to cryptocurrencies.¹⁴⁰ Additionally, Eric Swalwell, who also ran in the 2020 presidential election, accepted cryptocurrency donations.¹⁴¹

In recent elections, cryptocurrency donations enabled fringe extremist candidates to raise enough funds to significantly challenge incumbent politicians. For example, a 27-year-old self-proclaimed Islamophobe, Laura Loomer, ran for Congress and raised some of her campaign funds through cryptocurrency donations.¹⁴² The option to contribute to campaigns through cryptocurrencies was primarily offered by fringe extremist candidates like Loomer who attracted Libertarian and far-right supporters.¹⁴³ Cryptocurrencies provide anonymity and the opportunity to bypass banks and governments, which lack control over cryptocurrencies.¹⁴⁴

Even on the international arena, many political candidates and parties accepted cryptocurrency donations. Iceland's Pirate Party, a growing political party that has a platform on direct democracy, secured and won

¹³⁶ See Yessi Bello Perez, *7 Politicians in Support of Bitcoin and Blockchain Tech*, COINDESK (Aug. 5, 2015), <https://www.coindesk.com/7-politicians-in-support-of-bitcoin-and-blockchain-tech>.

¹³⁷ See Colin Wilhem, *'Bitcoin's Candidate' Takes Heat for Cryptocurrency Donations*, POLITICO (May 31, 2018), <https://www.politico.com/story/2018/05/29/bitcoin-candidate-cryptocurrency-donations-566833>.

¹³⁸ See Josiah Wilmoth, *Crypto-Loving US Senate Candidate Forced to Return \$130,000 Bitcoin Donation*, CCN (June 18, 2018, 5:13 PM), <https://www.ccn.com/crypto-loving-us-senate-candidate-forced-to-return-130000-bitcoin-donation/>.

¹³⁹ See Stan Higgins, *Rand Paul Accepts Bitcoin for Presidential Campaign*, COINDESK (Apr. 7, 2015, 1:30 PM), <https://www.coindesk.com/rand-paul-presidential-campaign-bitcoin-donations>.

¹⁴⁰ See Emily Birnbaum, *Swalwell Becomes Second 2020 Candidate to Accept Cryptocurrency Donations*, HILL (May 23, 2019, 11:51 AM), <https://thehill.com/policy/technology/445228-swalwell-becomes-second-2020-candidate-to-accept-cryptocurrency-donations>.

¹⁴¹ See *id.*

¹⁴² See Christine Stapleton, *Are Bitcoin Campaign Contributions a Fad or the Future of Fundraising?*, PALM BEACH POST (Sept. 21, 2020, 9:02 PM), <https://www.palmbeachpost.com/story/news/2020/09/17/more-candidates-allow-donors-use-bitcoin-campaign-contributions/5791395002/>.

¹⁴³ See *id.*

¹⁴⁴ See *id.*

several seats in Iceland's Parliament recently.¹⁴⁵ This party accepted a large number of cryptocurrency donations.¹⁴⁶ Additionally, Mathias Sundin, a former Swedish politician and member of the Liberal Party, accepted only Bitcoin donations when he first ran for Parliament in 2014.¹⁴⁷ In Japan, cryptocurrency donations are not only accepted, but are normalized in the political context.¹⁴⁸ Yet, various other forms of donations are not allowed in Japan.¹⁴⁹ Brazil even uses cryptocurrencies and blockchain technology as a mechanism to register donations as part of their Voto Legal project.¹⁵⁰ Cryptocurrencies clearly increased in significance in recent elections and may continue to do so.

II. WHY THE GOVERNMENT HAS A COMPELLING STATE INTEREST TO REGULATE BLOCKCHAIN TECHNOLOGY AND CRYPTOCURRENCIES FOR ELECTION CAMPAIGN FINANCE LAWS

With the concern about corruption that still exists even after *Citizens United*, it's clear that the government should regulate blockchain. Yet, blockchain technology is also an avenue for free speech. Thus, the Government is forced to consider the narrowest possible way to balance the regulation of blockchain technology and cryptocurrencies while maintaining free speech interests.¹⁵¹ For a compelling state interest, the government needs a legitimate justification for regulating blockchain technology and cryptocurrencies.¹⁵² Here, the compelling state interest is preventing corruption and the appearance of corruption itself.¹⁵³ This renders discussion of those justifications and why a regulation is necessary.

A. *Anonymous and Foreign Donations*

First, if the government allows cryptocurrency campaign contributions, there is a threat of anonymous donations and foreign interference. No one can trace or locate the original source of cryptocurrencies trans-

¹⁴⁵ See Gautham, *Bitcoin May Receive Boost under Pirate Party's in Iceland*, NEWSBTC (2016), <https://www.newsbtc.com/news/pirate-party-iceland-bitcoin-boost/>.

¹⁴⁶ See *id.*

¹⁴⁷ See Nermin Hajdarbegovic, *Swedish Politician Elected to Parliament on Bitcoin-Only Donations*, COINDESK (Sept. 26, 2014, 2:01 PM), <https://www.coindesk.com/swedish-politician-elected-parliament-bitcoin-donations>.

¹⁴⁸ See Catalina Uribe Burcher, *Cryptocurrencies and Political Finance*, INT'L IDEA (Feb. 2019), <https://www.idea.int/sites/default/files/publications/cryptocurrencies-and-political-finance>.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*

¹⁵¹ See NAACP v. Alabama, 357 U.S. 449, 460 (1958).

¹⁵² See *id.*

¹⁵³ See *id.*

ferred via a blockchain.¹⁵⁴ This can facilitate the violation of political regulations.¹⁵⁵ One can also transfer anonymous donations from countries that banned cryptocurrencies.¹⁵⁶ Over half of all countries in the world have banned cryptocurrencies in campaign donations because of the possibility of anonymous and foreign donations.¹⁵⁷ If a donor is anonymous, the government cannot discern whether the donor is a corporation or an individual voter, and whether one entity is the source of multiple transactions to the same candidate that altogether surpass the individual limit.¹⁵⁸

Even in a non-cryptocurrency context, over half of all countries have banned all types of foreign donations in elections in order to prevent external influence and maintain self-determination.¹⁵⁹ These countries believe that their individual voters and constituents should determine their elections.¹⁶⁰ Many media outlets and scholars speculated whether there was foreign involvement during the 2016 U.S. presidential election.¹⁶¹ Some scholars and politicians suspected that cryptocurrencies from Russia played a part in the 2016 U.S. elections.¹⁶² They reached these suspicions because of gaps in the financial transparency and political finance systems.¹⁶³ Other scholars speculated that Russian funds were transferred using cryptocurrency exchange accounts.¹⁶⁴ These instances relate to the idea of not only preventing corruption, but also preventing the appearance of corruption itself. Here, many experts believe there is a possibility that a foreign agent could anonymously donate to candidates and that the authorities and voters wouldn't know where these donations originated from.¹⁶⁵

¹⁵⁴ See Burcher, *supra* note 148.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.*

¹⁵⁷ See Leila Stein, *These Countries Banned Cryptocurrencies, Here's Why*, YAHOO NEWS (Apr. 22, 2021), <https://www.yahoo.com/now/countries-banned-cryptocurrencies-why-210500613.html>.

¹⁵⁸ See Burcher, *supra* note 148.

¹⁵⁹ See *Is There a Ban on Donations From Foreign Interests To Political Parties?*, INT'L IDEA (2021), <https://www.idea.int/data-tools/question-view/527>.

¹⁶⁰ See *id.*

¹⁶¹ See Abigail Abrams, *Here's What We Know So Far About Russia's 2016 Meddling*, TIME (Apr. 18, 2019, 8:20 AM), <https://time.com/5565991/russia-influence-2016-election/>.

¹⁶² See Nikhilesh De, *US Treasury Sanctions Russians Using Crypto for Election Interference*, COIN DESK (Sept. 10, 2020, 1:02 PM), <https://www.coindesk.com/ofac-sanctions-election-interference/>.

¹⁶³ See *id.*

¹⁶⁴ See Valentina Pasquali, *Cryptocurrency Played Key Role in 2016 Election Interference by Russia: Prosecutors*, MONEY LAUNDERING (July 13, 2018), <https://www.moneylaundering.com/news/cryptocurrency-had-key-role-in-2016-election-interference-by-russia-prosecutors/>.

¹⁶⁵ See Kristian Hernández, *How Cryptocurrency is Sneaking into State Elections*, CTR. PUB. INTEGRITY (Oct. 26, 2018, 8:20 PM), <https://publicintegrity.org/politics/state-politics/how-cryptocurrency-is-sneaking-into-state-elections/>.

The United States government takes the threat of foreign and anonymous donations in elections very seriously. The Ninth Circuit ruled that prohibitions against foreign donations in U.S. elections were necessary to maintain the integrity of elections.¹⁶⁶ In *United States v. Singh*, the Ninth Circuit Court mentioned that federal statutes prohibiting foreign nationals from donating to U.S. elections did not violate their First Amendment rights.¹⁶⁷ In this specific case, a noncitizen residing in San Diego, California desired to transform and develop San Diego.¹⁶⁸ This noncitizen attempted to influence local politics by donating heavily to a candidate running for local city office in San Diego.¹⁶⁹ Here, the Ninth Circuit ruled that first, Congress and the Federal Government had plenary powers over the immigration and naturalization system and second, that these powers extended to prohibiting foreign individuals from donating to campaigns.¹⁷⁰

In *Bluman v. Federal Election Comm'n*, the United States District Court for the District of Columbia ruled that although foreigners in the United States have some of the same rights as U.S. citizens, foreigners are denied certain rights and privileges that only U.S. citizens enjoy, such as voting, serving on a jury, working as a police officer, and working as a public school teacher.¹⁷¹ Further, the government can deny foreigners from activities related to the process of democratic self-government.¹⁷² Thus, preventing foreigners from donating in U.S. elections is well within the government's ability to maintain a fair democratic process.¹⁷³

B. *Volatile Nature of Cryptocurrencies*

Many cryptocurrencies, such as DASH, Stellar, and Ripple, are extremely volatile and frequently shift in value.¹⁷⁴ This volatility attracted many cybercriminals and enabled them to hide large monetary sums from authorities.¹⁷⁵ Cybercriminals possess “an estimated 10 to 20 per-

¹⁶⁶ See *United States v. Singh*, 924 F.3d 1030, 1043 (9th Cir. 2019).

¹⁶⁷ See *id.* at 1031.

¹⁶⁸ See *id.* at 1040.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.* at 1042–43.

¹⁷¹ See *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 282 (D.D.C. 2011).

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ See Thomas Yeung, *The Top 25 Cryptocurrencies to Know in 2021: BTC, ETH, XRP, XLM and More*, NASDAQ (Jan. 13, 2021), <https://www.nasdaq.com/articles/the-top-25-cryptocurrencies-to-know-in-2021%3A-btc-eth-xrp-xlm-and-more-2021-01-13>.

¹⁷⁵ See *Healthy Volatility and Its Implications for Crypto Markets*, CRYPTOPEDIA GEMINI (June 21, 2021), <https://www.gemini.com/cryptopedia/volatility-index-crypto-market-price#section-understanding-healthy-market-volatility>.

cent of all Bitcoin in existence.”¹⁷⁶ Some of the first users of cryptocurrencies were drug lords operating on the Silk Road, a digital market for drugs on the dark web.¹⁷⁷ Cryptocurrencies were also used on the dark web to buy and sell credit card numbers, fund hacktivism, and launder money.¹⁷⁸ Even terrorist organizations, such as ISIS and Al-Qaeda, secured large overseas donations through cryptocurrencies on the dark web.¹⁷⁹

It is difficult to monitor and oversee the new emerging cryptocurrencies.¹⁸⁰ While some, such as Bitcoin and Ethereum, are well known, others were designed to be extremely volatile and speculative in the first place.¹⁸¹ Bubbles and speculation drive the price levels of these cryptocurrencies, which sometimes involve hyperinflation.¹⁸² Hence, many criminals can take advantage of the volatility to hide the precise amount they are transferring.¹⁸³ For instance, an individual could donate a certain amount of an extremely volatile cryptocurrency knowing that by the time it reaches a candidate, it will be worth several times the original amount.¹⁸⁴

Another example of criminals abusing the volatility of cryptocurrencies is “spoofing,” in which individuals place orders but cancel them before they are finalized.¹⁸⁵ In a cryptocurrency market, this appears as if there is more demand for that cryptocurrency, which increases that cryptocurrency’s value.¹⁸⁶ In a regular market, a high volatility would

¹⁷⁶ Wendy Zamora, *What is Cryptocurrency and Why Do Cybercriminals Love it*, MALWAREBYTES LABS (Nov. 3, 2017), <https://blog.malwarebytes.com/101/2017/11/cryptocurrency-works-cybercriminals-love/>.

¹⁷⁷ See David Adler, *Silk Road: The Dark Side of Cryptocurrency*, FORDHAM J. CORP. & FIN. L. (Feb. 21, 2018), <https://news.law.fordham.edu/jcfl/2018/02/21/silk-road-the-dark-side-of-cryptocurrency/>.

¹⁷⁸ See Zamora, *supra* note 176.

¹⁷⁹ See Press Release, the United States Dep’t of Just., Global Disruption of Three Terror Finance Cyber-Enabled Crimes, <https://www.justice.gov/opa/pr/global-disruption-three-terror-finance-cyber-enabled-campaigns>.

¹⁸⁰ See Vance Cariaga, *What is the Next Big Cryptocurrency to Explode in 2021?*, GO BANKING RATES (Nov. 11, 2021), <https://www.gobankingrates.com/investing/crypto/what-is-the-next-big-cryptocurrency/>.

¹⁸¹ See Randy Watts, *Yes, Bitcoin Is A Speculative Frenzy. No, It’s Not Going Away.*, FORBES (Feb. 22, 2021), <https://www.forbes.com/sites/randywatts/2021/02/22/yes-bitcoin-is-a-speculative-frenzy-no-its-not-going-away/?sh=27ea5774e4ad>.

¹⁸² See *id.*

¹⁸³ See *id.*

¹⁸⁴ See Rebecca Heilweil, *Feds Are Seizing Cryptocurrency from Criminals. Now They Have to Figure Out What to Do With it*, VOX (July 30, 2021, 10:50 AM), <https://www.vox.com/recode/2021/7/30/22600574/cryptocurrency-bitcoin-ethereum-asset-seizure-crimes-bank-storage-password-department-of-justice>.

¹⁸⁵ See Nir Kshetri, *How Can Criminals Manipulate Cryptocurrency Markets?*, CONVERSATION (May 31, 2018), <https://theconversation.com/how-can-criminals-manipulate-cryptocurrency-markets-97294>.

¹⁸⁶ See *id.*

trigger circuit breakers who would halt trading and reset prices to minimize losses.¹⁸⁷ But because cryptocurrencies and blockchains are decentralized and do not rely upon a centralized authority or government, there are no circuit breakers to halt trading.

In a case discussing whether Bitcoin qualified as money under the Money Transmitter's Act, the Central District Court of California noted that transmitting Bitcoin across various nefarious channels throughout the Silk Road constituted money laundering.¹⁸⁸ The court pointed out that these activities are common amongst criminals who take advantage of unstable rates.¹⁸⁹ In the Northern District Court of Georgia, the court ruled that an owner who lost his money through a cryptocurrency exchange system could not recover lost funds or assert claims under the Commodities Exchange Act.¹⁹⁰ The court mentioned that cryptocurrencies are too volatile involving many variables that create difficulties for experts to discern their true value.¹⁹¹

C. *Unregulated and Untraceable Transfer of Money*

The government cannot trace cryptocurrencies because of their technological infrastructure.¹⁹² Not only can one hide their identity when transferring cryptocurrencies, one can also hide the original location and conceal the exact amount they are transferring.¹⁹³ Basically, one can hide the checkpoints and middle locations the money traveled through to reach the candidate.¹⁹⁴ Individuals can also employ pseudonyms and transfer money across international borders with just a few clicks without intermediaries or banks.¹⁹⁵ The source of these cryptocurrencies cannot be easily inspected thus negating the goal of election transparency. Thus, not only is the identity of the donor unknown, but the original source and location of where the donation is from is also unknown.¹⁹⁶ This possible scenario could allow candidates to hide how much money they obtained through blockchain ledgers and cryptocurrencies.¹⁹⁷ But, voters may sus-

¹⁸⁷ *See id.*

¹⁸⁸ *See* United States v. Harmon, 474 F. Supp. 3d 76, 104 (D.D.C. 2020).

¹⁸⁹ *See id.*

¹⁹⁰ *See* BDI Capital, LLC v. Bulbul Investments LLC, 446 F. Supp. 3d 1127, 1135 (N.D. Ga. 2020).

¹⁹¹ *See id.* at 1136.

¹⁹² *See* Debra Amato, *Five Reasons Why the Government Does Not Like Bitcoin*, CAL. BUS. J. (Oct. 30, 2021), <https://calbizjournal.com/five-reasons-why-the-government-does-not-like-bitcoin/>.

¹⁹³ *See* Burcher, *supra* note 148.

¹⁹⁴ *See id.*

¹⁹⁵ *See id.*

¹⁹⁶ *See id.*

¹⁹⁷ *See id.*

pect candidates who suddenly appear to have a plethora of cash to spend.¹⁹⁸

However, an individual could transfer cryptocurrency donations to a nonprofit or a shell group that advocates for a specific issue on the candidate's platform.¹⁹⁹ This framework is known as "dark money."²⁰⁰ Dark money refers to spending intended to influence political outcomes where the source of the money is undisclosed.²⁰¹ Politically active nonprofits such as 501(c)(4)s are not under any legal obligation to identify their donors, even if they spend to influence elections.²⁰² When these organizations decide not to disclose their sources, they are considered dark money groups.²⁰³ Secretive nonprofits and shell companies may give unlimited amounts of money to super political action committees.²⁰⁴ While super political action committees are required to disclose their donors, some of these groups are effectively dark money outlets when the bulk of their funding cannot be traced back to the original donor.²⁰⁵ Cryptocurrencies would allow dark money to more easily flow because not only would they could hide the source and identity of donors, but they could also eliminate the need for middlemen.²⁰⁶ Thus, if the records of money transfers were anonymous, encrypted, and untraceable, dark money will become more dark and more secret. This would increase the appearance of corruption, albeit hidden.

Dark money in politics is a significant problem today. Dark money groups have spent about \$1 billion to influence elections since the *Citizens United* decision.²⁰⁷ Surprisingly, Congress has failed to implement effective legislation that permanently addresses dark money.²⁰⁸ Every time Congress passes legislation that addresses dark money, new loopholes emerge allowing dark money to flow.²⁰⁹ After *Citizens United*, Democrats attempted to pass the DISCLOSE Act in 2010, which would compel transparency so that any organization that spent at least \$10,000 on elections would have to disclose the source of those contributions

¹⁹⁸ See *id.*

¹⁹⁹ See *id.*

²⁰⁰ See *id.*

²⁰¹ See *Dark Money Basics*, CTR. RESPONSIVE POLITICS, <https://www.opensecrets.org/dark-money/basics>.

²⁰² See *id.*

²⁰³ See *id.*

²⁰⁴ See *id.*

²⁰⁵ See *id.*

²⁰⁶ See Burcher, *supra* note 148, at 16.

²⁰⁷ See *Dark Money Basics*, *supra* note 201.

²⁰⁸ See Karl Evers-Hillstrom, *More Money, Less Transparency: A Decade Under Citizens United*, OPEN SECRETS (Jan. 14, 2020), <https://www.opensecrets.org/news/reports/a-decade-under-citizens-united>.

²⁰⁹ See *id.*

during that election cycle.²¹⁰ However, Republicans aggressively fought against this bill, and prevented it from reaching 60 votes in the Senate.²¹¹ However, in 2019, the requirements and provisions from the DISCLOSE Act were incorporated into the For the People Act (H.R. 1), a bill that would expand voting rights, rectify campaign finance laws, limit gerrymandering, and create new ethics rules.²¹² This bill passed the House and is currently pending before the Senate.²¹³ Unfortunately, this bill does not address cryptocurrency contributions.²¹⁴ If the government does not regulate cryptocurrency contributions, this may lead to an increase in the problems associated with dark money spending.

D. *General Lack of Oversight of Cryptocurrencies*

Currently, the U.S. federal government does not adequately monitor or oversee cryptocurrencies. There is no government agency specifically tasked with monitoring cryptocurrencies.²¹⁵ In *CFTC v. McDonnell*, the United States District Court for the Southern District of New York attempted to discern which agency had authority over cryptocurrencies and determined that various agencies, such as the Commodity Futures Trading Commission, the Securities and Exchange Commission, the Treasury Department's Financial Enforcement Network, and the Internal Revenue Service, all had some jurisdictional power to oversee cryptocurrencies.²¹⁶ Thus, many of these agencies have each tried to enact some sort of regulatory mechanism on cryptocurrencies. The Internal Revenue Service launched an international task force to tackle cryptocurrency-enabled crimes.²¹⁷ The Securities and Exchange Commission issued investor alerts to warn investors about fraudulent activity involving cryptocurrencies.²¹⁸ On the state level, many states are yet to consider legislation on cryptocurrencies.²¹⁹

Furthermore, the threshold for verifying campaign donations is extremely low, which allows cryptocurrencies to bypass such restric-

²¹⁰ See *id.*

²¹¹ See *id.*

²¹² See *WHITEHOUSE INTRODUCES DISCLOSE ACT TO RESTORE AMERICANS' TRUST IN DEMOCRACY*, Senator Sheldon Whitehouse Press Release, <https://www.whitehouse.senate.gov/news/release/whitehouse-introduces-disclose-act-to-restore-americans-trust-in-democracy>.

²¹³ See *id.*

²¹⁴ See *id.*

²¹⁵ See *id.*

²¹⁶ See generally *Commodity Futures Trading Comm'n v. McDonnell*, 287 F. Supp. 3d 213 (E.D.N.Y. 2018).

²¹⁷ See Brandi Reynolds, *Regulatory Oversight for Cryptocurrency*, CORP. COMPLIANCE INSIGHTS (July 23, 2018), <https://www.corporatecomplianceinsights.com/regulatory-oversight-cryptocurrency/>.

²¹⁸ See *id.*

²¹⁹ See *id.*

tions.²²⁰ The U.S. Senate Judiciary Committee cautioned that because of the lack of oversight on cryptocurrencies, foreign and illicit sources could circumvent campaign finance laws.²²¹ Although political committees and candidates may not knowingly accept foreign contributions, they are required only to take ‘minimally intrusive’ steps to verify a contributor’s true nationality.²²² As long as a donor provides attestation and uses a U.S. address, the contribution appears legitimate and does not necessitate additional due diligence requirements.²²³ When cryptocurrencies are used, foreign donations can become extremely difficult to detect.²²⁴ Because of this lack of oversight on cryptocurrencies and their potential for misuse, the U.S. government has a compelling state interest to regulate cryptocurrency campaign contributions.

E. *Unequal Playing Field*

Finally, if the U.S. government did not regulate cryptocurrency contributions, it would lead to an unequal playing field amongst candidates and voters which would negatively affect marginalized voters and groups. Marginalized groups are unlikely to use cryptocurrencies or have access to technology mediums to access blockchains.²²⁵ When cryptocurrencies become more mainstream, this may further marginalize the poor from the political process.²²⁶ In fact, this hypothetical scenario is similar to the marginalization of the working class, who are already on the sidelines of the political system.²²⁷ In addition to affecting marginalized voters, blockchains and cryptocurrencies may affect marginalized candidates and hinder them from running for office.²²⁸ In fact, many women and minority candidates are at a disadvantage when they run for office since they lack access to sufficient campaign funds.²²⁹ Cryptocur-

²²⁰ See David Murray, *Protecting Our Elections: Examining Shell Companies and Virtual Currencies as Avenues for Foreign Interference*, FIN. INTEGRITY NETWORK, <https://www.judiciary.senate.gov/imo/media/doc/06-26-18%20Murray%20Testimony.pdf>.

²²¹ See *id.*

²²² See *id.*

²²³ See *id.*

²²⁴ See Burcher, *supra* note 148, at 13–14. See generally Anshu Siripurapu, *Cryptocurrencies, Digital Dollars, and the Future of Money*, COUNCIL ON FOREIGN RELATIONS (Sept. 24, 2021), <https://www.cfr.org/background/cryptocurrencies-digital-dollars-and-future-money> (stating that governments would have difficulty tracking down illicit activities, terrorism and sanctions evasions, and unregulated finance. From this, one can infer that governments would likely have difficulty tracing foreign donations in elections).

²²⁵ See Nellie Bowles, *Women in Cryptocurrencies Push Back Against “Blockchain Bros”*, N.Y. TIMES (Feb. 25, 2018), <https://www.nytimes.com/2018/02/25/business/cryptocurrency-women-blockchain-bros.html>.

²²⁶ See Burcher, *supra* note 148, at 18.

²²⁷ See *id.*

²²⁸ See *id.*

²²⁹ See *id.*

rencies could further this divide since the political establishment sometimes excludes women and minority candidates from established fund networks.²³⁰

Several technological scientists proposed that blockchain technology could help electoral systems maintain the integrity of elections and keep track of voting.²³¹ Some speculate that the government may move to a voting system that uses technology instead of paper ballots.²³² A scary implication here is the frightening possibility that voters would be required to provide their own technological systems to vote.²³³ Similarly, many states require a money transmitters license to engage with cryptocurrencies.²³⁴ There are already several barriers to entry to obtain a money transmitters license ranging from a surety bond worth at least several hundred thousand dollars in some states, to licensing fees that range upwards of a thousand dollars.²³⁵ Other requirements for a money transmitter license include a minimum net worth requirement, a certificate of good standing, and a form of security.²³⁶ The poor and working class likely lack these requirements.²³⁷ In a system in which unregulated cryptocurrency donations are normalized, a required money transmitter license would marginalize the poor from the political process.

III. WHAT A PROPER REGULATION WOULD LOOK LIKE

While cryptocurrency campaign contributions should be regulated to prevent corruption, a proper regulation would have to balance this with free speech interests. The following is an ideal way to regulate cryptocurrencies in an election cycle.

A. *Remove the Anonymity of Cryptocurrency Donations*

First, there is the anonymity factor. Several states in the United States and over half of all countries banned cryptocurrencies because they are anonymous.²³⁸ Many people feel uneasy about cryptocurrency

²³⁰ See generally Burcher, *supra* note 148.

²³¹ See Jack Tatar, *How Blockchain Technology Can Change How We Vote*, BALANCE (Mar. 31, 2021), <https://www.thebalance.com/how-the-blockchain-will-change-how-we-vote-4012008>.

²³² See *id.*

²³³ See *id.*

²³⁴ See Reynolds, *supra* note 217.

²³⁵ See Eric Weisbrot, *How to Get a Money Transmitter License*, JW SURETY BONDS (Mar. 5, 2019) <https://www.jwsuretybonds.com/blog/money-transmitter-license-step-by-step-guide>.

²³⁶ See *id.*

²³⁷ See *id.*

²³⁸ See Hernández, *supra* note 10.

contributions because they ensure anonymity.²³⁹ However, if the government removed the anonymity factor, then the risk of corruption decreases. During Andrew Yang's presidential campaign, he only accepted disclosed cryptocurrency donations and refused to accept anonymous cryptocurrency donations.²⁴⁰ Furthermore, if the government forced disclosure, this would remove the threat of foreign interference.

Although the government cannot forcibly deanonymize cryptocurrency campaign contributions due to technology limits, they can mandate that candidates, political parties, and other recipients of cryptocurrency campaign contributions only accept disclosed donations. Donations should be attached with the donor's full name and address, and an attestation that they own the cryptocurrency and are U.S. citizens. Anonymous cryptocurrency donations and/or donations with incomplete information should be immediately returned to the sender. While this provision may not immediately solve all problems, it is a step in preventing corruption.

B. Only Accept Well-known and Established Cryptocurrencies

Next, campaigns should only accept cryptocurrencies that are well known, such as Bitcoin, Litecoin, and Ethereum. There are over 10,000 different kinds of cryptocurrencies today, and monitoring all of them would be exhausting and difficult to manage.²⁴¹ Some cryptocurrencies are practically obscure, and some were designed to avoid and escape detection.²⁴² Other cryptocurrencies have shields protecting users' identity through greater levels of encryption.²⁴³ Some cryptocurrencies were created as a joke, such as Dogecoin and Trumpcoin.²⁴⁴ If candidates only accepted cryptocurrency donations from well-known cryptocurrencies, the government would avoid potential problems associated with unknown or obscure cryptocurrencies. During his Presidential campaign, Andrew Yang mostly focused on Bitcoin and Ethereum for cryptocur-

²³⁹ See *id.*; Christine Stapleton, *Bitcoin Campaign Contributions Are Getting More Mainstream*, GOV'T TECH. (Sept. 17, 2020), <https://www.govtech.com/budget-finance/bitcoin-campaign-contributions-are-getting-more-mainstream.html>.

²⁴⁰ Vaškevičius, *supra* note 7.

²⁴¹ See Liran Rosenfeld, *The Number of Cryptocurrencies is Exploding. This is How You Can Learn About the Different Altcoins and Safely Get Involved*, YAHOO! (June 1, 2021), <https://www.yahoo.com/now/number-cryptocurrencies-exploding-learn-different-124923879.html>.

²⁴² See Mauro Conti et al., *A Survey on Security and Privacy Issues of Bitcoin*, 20 IEEE COMM. SURV. & TUTORIALS 3416, 3425–26 (2018).

²⁴³ See *id.*

²⁴⁴ See Stan Schroeder, *Bananacoin, Titcoin, and Trumpcoin: These Are the Craziest Cryptocurrencies Out There*, MASHABLE (Jan. 29, 2018) <https://mashable.com/2018/01/29/crazy-cryptocurrencies/>.

rency donations.²⁴⁵ Many other candidates for political office who accepted cryptocurrency donations only accepted Bitcoins and refused other cryptocurrencies.²⁴⁶

Some cryptocurrencies were designed in such a way that they are incompatible with the public policy goals of campaign finance laws. Monero is a cryptocurrency that was designed to have greater levels of anonymity.²⁴⁷ Zcash added protective shields to hide users' locations and identities.²⁴⁸ DeepOnion integrated the TOR browser and added extra privacy layers to anonymize and conceal every aspect about the transaction.²⁴⁹ Polkadot allowed diverse blockchains to connect and transfer messages instantaneously.²⁵⁰ Petro advanced monetary sovereignty and new forms of international financing.²⁵¹ Experts have not studied many of these newer cryptocurrencies.²⁵² Cryptocurrencies that were designed to thwart stability and bypass laws undermine the integrity of our political systems. Finally, well-known cryptocurrencies are easier to track and manage than obscure ones.²⁵³

C. *Record the Receipt of Transactions*

Candidates and donors should record the receipt of transaction at the exact amount at the time of exchange. This action would prevent individuals from taking advantage of volatile rates to donate more than is allowed. Extreme volatility sometimes led to inconsistencies in valuation because some states and the federal government differ in how they value an asset when it was received. In Tennessee, any increase in value upon receipt of a cryptocurrency but prior to liquidation must be reported as interest.²⁵⁴ In Washington, D.C., cryptocurrency contributions are re-

²⁴⁵ See Vaškevičius, *supra* note 7.

²⁴⁶ See Tess Bonn, *Politicians are Getting in on the Cryptocurrency Craze to Fund Campaigns*, CNBC (Mar. 2, 2018), <https://www.cnbc.com/2018/03/01/cryptocurrency-candidates-politicians-embrace-bitcoin.html>.

²⁴⁷ See Hernández, *supra* note 10.

²⁴⁸ See Daira Hopwood et al., *Zcash Protocol Specification*, VERSION 2021.2.16 [NU5 PROPOSAL] 108 (2021), <https://zips.z.cash/protocol/protocol.pdf>.

²⁴⁹ See *The DeepOnion Story*, DEEPOPION, <https://deeponion.org/our-purpose.html> (last visited Nov. 19, 2021).

²⁵⁰ See *About Polkadot, a Platform for Web3*, POLKADOT, <https://polkadot.network/about/> (last visited Nov. 19, 2021).

²⁵¹ See Nathaniel Popper & Ana Vanessa Herrero, *The Coder and The Dictator*, N.Y. TIMES (Mar. 20, 2020), <https://www.nytimes.com/2020/03/20/technology/venezuela-petro-cryptocurrency.html>.

²⁵² See Sheelah Kolhatkar, *The Challenges of Regulating Cryptocurrency*, NEW YORKER (Oct. 6, 2021), <https://www.newyorker.com/business/currency/the-challenges-of-regulating-cryptocurrency>.

²⁵³ See Robert Farrington, *There's More to Cryptocurrency Than Bitcoin*, FORBES (Feb. 1, 2021), <https://www.forbes.com/sites/robertfarrington/2021/02/01/theres-more-to-cryptocurrency-than-bitcoin/?sh=75f0d02cb6dc>.

²⁵⁴ See TENN. CODE ANN. § 2-10-113(b)-(c) (2021).

ported according to the date the contribution is liquidated to U.S. dollars.²⁵⁵ Oregon mandates that candidates value cryptocurrency donations on the day of receipt.²⁵⁶ Finally, the Federal Election Commission states that candidates should value cryptocurrencies on their actual market value and the exchange rate for that day.²⁵⁷

Candidates should immediately convert and liquidate cryptocurrency contributions to dollars upon receipt to prevent hoarding donations to increase value. In Tennessee, candidates are required to immediately liquidate cryptocurrency contributions and store them in a campaign account.²⁵⁸ Montana mandates that candidates store cryptocurrency contributions in a campaign depository upon liquidation.²⁵⁹ Furthermore, while receipt records would solve the problem of volatile rates, receipt records serve another purpose of creating an actual record of donations. It would also highlight how much of a candidate's donations originated from cryptocurrency contributions. Lastly, receipts would likely create greater transparency and trust between voters and candidates.²⁶⁰

D. Establish a Regulatory Agency to Oversee and Monitor Cryptocurrencies

Finally, a new regulatory agency should oversee cryptocurrencies.²⁶¹ Although it is not possible to actively monitor or surveil cryptocurrencies and blockchain technology, a regulatory agency would likely create greater understanding of cryptocurrencies and blockchain technology. If the government created such an agency, they wouldn't be reliant on cryptocurrency enthusiasts.²⁶² This hypothetical agency should attempt to learn and keep track of different cryptocurrencies. While it is impossible to restrict the flow of money through blockchain technology, the U.S. government should task this agency with asking candidates to

²⁵⁵ See D.C. Mun. Regs. tit. 3 § 3008.9(b) (2021).

²⁵⁶ See OR. REV. STAT. § 260.011 (2019).

²⁵⁷ See Fed. Election Comm'n, Opinion Letter on the Acceptance, Purchase, and Disbursement of Bitcoins Under the Federal Election Campaign Act of 1971 (May 8, 2014), <https://www.fec.gov/files/legal/aos/2014-02/2014-02.pdf>.

²⁵⁸ See TENN. CODE ANN. § 2-10-113 (2021).

²⁵⁹ See COPP, Opinion Letter on the Use of Bitcoin as Campaign Currency (Jan. 23, 2014), https://politicalpractices.mt.gov/_docs/5campaignfinance/EricFultonBitcoinUseOpinion.pdf.

²⁶⁰ See *Disclosure and Reporting Requirements*, NAT'L CONF. STATE LEGISLATURES (July 17, 2015), <https://www.ncsl.org/research/elections-and-campaigns/disclosure-and-reporting-requirements.aspx>.

²⁶¹ See Lauren Feiner, *Coinbase Says U.S. Should Create a New Cryptocurrency Regulator*, CNBC (Oct. 14, 2021), <https://www.cnbc.com/2021/10/14/coinbase-says-us-should-create-a-new-cryptocurrency-regulator.html>.

²⁶² See James T. Areddy, *Crypto Experts in Demand as Countries Launch Digital Currencies*, WALL ST. J. (July 18, 2021), <https://www.wsj.com/articles/crypto-experts-in-demand-as-countries-launch-digital-currencies-11626600609>.

disclose their cryptocurrency donations and keep records of cryptocurrency donations. Furthermore, Andrew Yang proposed a similar hypothetical agency to learn about cryptocurrencies as opposed to an outright ban.²⁶³

Currently, there are various regulatory agencies such as the Commodity Futures Trading Commission, the Securities and Exchange Commission, the Treasury Department's Financial Enforcement Network, and the Internal Revenue Service that all have jurisdiction over cryptocurrencies.²⁶⁴ However, many of these agencies differ on how to specifically monitor these cryptocurrencies. A few agencies classify cryptocurrencies as intangible goods rather than actual money. For instance, the Internal Revenue Service treats cryptocurrencies as property.²⁶⁵ The Securities and Exchange Commission views cryptocurrencies as securities.²⁶⁶ The Commodity Futures Trading Commission regards cryptocurrencies as commodities.²⁶⁷ On the other hand, other countries assign a specific agency to monitor cryptocurrencies. For example, Japan tasked its Financial Services Agency to enact laws to regulate cryptocurrencies.²⁶⁸ Thus, the United States government should assign or create a new agency to monitor cryptocurrencies.

IV. THE COUNTERARGUMENT AND WHY IT FAILS: WHOLLY UNREGULATED CRYPTOCURRENCIES DON'T BELONG IN POLITICAL DONATIONS

While this Note provided reasons why the government should regulate cryptocurrency campaign contributions, we should address other arguments. First, maybe cryptocurrencies should be unregulated because technology can lead to further innovation. Second, cryptocurrency campaign contributions could be a form of expression under the First Amendment.

²⁶³ See Shalini Nagarajan, *Crypto Advocate Andrew Yang Plans to Transform New York City into a Bitcoin Hub if He's Elected Mayor*, BUS. INSIDER (Feb. 12, 2021), <https://markets.businessinsider.com/currencies/news/andrew-yang-new-york-bitcoin-hub-cryptocurrencies-elected-mayor-candidate-2021-2-1030078017>.

²⁶⁴ See *Cryptocurrency Regulators and Regulations*, BITIRA (Nov. 10, 2020), <https://www.bitira.com/cryptocurrency-regulators-and-regulations/>.

²⁶⁵ See Keith A. Aqi, *Notice 2014-21*, IRS (Mar. 25, 2014), <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

²⁶⁶ See generally J. Scott Colesanti, *Trotting Out the White Horse: How the S.E.C. Can Handle Bitcoin's Threat to American Investors*, 65 SYRACUSE L. REV. 1 (2014); Bonn, *supra* note 246.

²⁶⁷ See generally *Commodity Futures Trading Comm'n v. McDonnell*, 287 F. Supp. 3d 213 (E.D.N.Y. 2018).

²⁶⁸ See Francine McKenna, *Here's How the U.S. and the World Regulate Bitcoin and Other Cryptocurrencies*, MARKET WATCH (Dec. 28, 2017), <https://www.marketwatch.com/story/heres-how-the-us-and-the-world-are-regulating-bitcoin-and-cryptocurrency-2017-12-18>.

A. *Technology Improves People's Lives*

First, technology improves people's lives and can innovate society. Apple, Microsoft, IBM, and other technology companies created inventions that revolutionized society.²⁶⁹ Technology also influenced politics. For example, in the early days of this nation, the printing press heavily innovated society and the election process.²⁷⁰ In the beginning, the first newspapers were partisan papers. The political parties operated these papers and controlled the spread of information.²⁷¹ Hence, they controlled the information that voters had. Today, most people can access information at their fingertips through the internet on smartphones and computers.²⁷² Various entities and individuals own or manage a publication now. Political parties no longer solely control the media, directly resulting in the dissemination of all types of information.²⁷³ This occurred because in the early days, the government did not completely control or regulate the printing press.²⁷⁴

Additionally, technology enthusiasts point out that blockchain technology can provide a way for a highly secure, decentralized record, and is currently used in various security and healthcare systems.²⁷⁵ Thus, maybe it can be used to record votes and prevent voter fraud in elections. Perhaps blockchain technology and cryptocurrencies will one day safeguard voters' interests and revolutionize technology. Maybe there will someday be a new blockchain-based system used to disseminate information. Indeed, technology is rapidly improving and simply regulating it may lead to new loopholes and problems.

However, there is still the risk of election interference if the government does not regulate cryptocurrency contributions. First, cryptocurrencies provide anonymity, which is incompatible with campaign finance

²⁶⁹ See Chelsea Gohd, *Apple Joins Amazon, Facebook, Google, IBM and Microsoft in AI initiative*, FUTURISM (Jan. 29, 2017), <https://futurism.com/apple-joins-amazon-facebook-google-ibm-and-microsoft-in-ai-initiative>.

²⁷⁰ See DJ Wardynski, *Technology and Society: How Technology Changed Our Lives*, BRAINSPIRE (Oct. 24, 2019), <https://www.brainspire.com/blog/technology-and-society-how-technology-changed-our-lives>.

²⁷¹ See generally John V. Pavlik & Shawn McIntosh, *CONVERGING MEDIA* (6th ed. 2018).

²⁷² See Kristen Purcell & Lee Rainie, *Americans Feel Better Informed Thanks to the Internet*, PEW RSCH. CTR. (Dec. 8, 2014), <https://www.pewresearch.org/internet/2014/12/08/better-informed/>.

²⁷³ See generally Carol Sue Humphrey, *THE PRESS OF THE YOUNG REPUBLIC* (1996); James L. Baughman, *The Rise and Fall of Partisan Journalism*, CTR. FOR JOURNALISM ETHICS (Apr. 20, 2011), <https://ethics.journalism.wisc.edu/2011/04/20/the-fall-and-rise-of-partisan-journalism/>.

²⁷⁴ See *id.*

²⁷⁵ See Shuyun Shi et al., *Applications of Blockchain in Ensuring the Security and Privacy of Electronic Health Record Systems: A Survey*, 97 *COMPUTS. & SEC.* 966 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7362828/pdf/main.pdf>.

laws.²⁷⁶ Some cryptocurrencies were designed to have added layers of anonymity.²⁷⁷ This anonymity can allow foreign interference in elections.²⁷⁸ Thus, the government needs to require disclosure of cryptocurrency donations. Because preventing anonymity is paramount to prevent corruption, allowing unregulated blockchain technology and cryptocurrency contributions is not feasible.

Moreover, unregulated blockchain technology and cryptocurrency contributions may funnel more dark money. In a hypothetical example, an extremely wealthy individual could skip the middlemen and instead directly donate unspecified large cryptocurrency donations to the candidate bypassing the need of third-party organizations. This scenario may increase corruption itself. Voters would ponder whether this candidate represents them or represents the extremely wealthy individual donor. Even if the candidate still represents the people despite a large monetary contribution from a wealthy donor, it still fosters the mere appearance of corruption itself. When a wealthy individual contributes a large donation, this creates suspicion that the candidate is more beholden to the donor rather than to their constituents.²⁷⁹ This is akin to bribery.²⁸⁰ It's not only important for the government to prevent corruption, but also important for the government to prevent the appearance of corruption itself.

B. *Cryptocurrency Donation is a Form of Expression*

Maybe cryptocurrency donations should be unregulated because these donations are just expressions. Expression is within the confines of the First Amendment.²⁸¹ The Supreme Court ruled in *Texas v. Johnson* that flag burning is protected under the First Amendment because it is a form of expression.²⁸² The Supreme Court also ruled that the First Amendment covers nonspeech acts and does not end or stop at the spoken or written word. In *Stromberg v. California*, the Supreme Court ruled that a display of a red flag is a form of expression and protected by the

²⁷⁶ See Rachel-Rose O'Leary, *We Have Entered the Age of Anonymous Crypto*, COINDESK (Jan 25, 2021, 3:22 PM), <https://www.coindesk.com/age-anonymous-crypto>.

²⁷⁷ See *id.*

²⁷⁸ See Nikhilesh De, *US Treasury Sanctions Russians Using Crypto for Election Interference*, COINDESK, <https://www.coindesk.com/markets/2020/09/10/us-treasury-sanctions-russians-using-crypto-for-election-interference/>.

²⁷⁹ See Nicholas Confessore, Sarah Cohen & Karen Yourish, *Small Pool of Rich Donors Dominates Election Giving*, N.Y. TIMES (Aug. 1, 2015), <https://www.nytimes.com/2015/08/02/us/small-pool-of-rich-donors-dominates-election-giving.html>.

²⁸⁰ See Jeffrey Milyo, *Do Campaign Contributions Corrupt Politics?*, INDEPENDENT INST. (Oct. 25, 1999), <https://www.independent.org/news/article.asp?id=448>.

²⁸¹ See *7 Things You Need to Know About the First Amendment*, MIDDLE TENN. ST. U., <https://www.mtsu.edu/first-amendment/page/things-you-need>.

²⁸² See generally *Texas v. Johnson*, 491 U.S. 397 (1989).

First Amendment.²⁸³ In *Tinker v. Des Moines Independent Community School District*, the Supreme Court held that the First Amendment protected wearing black armbands.²⁸⁴ The Supreme Court has long considered the First Amendment to protect political and ideological speech, including speech concerning politics, nationalism, religion, or similar opinion.²⁸⁵ The Supreme Court also ruled that political speech can take other forms besides the written or spoken word, such as money or symbolic acts.²⁸⁶ A government regulation that implicates political or ideological speech receives strict scrutiny, whereby the government must show that the regulation is narrowly tailored to achieve a compelling government interest.²⁸⁷ Assuming if cryptocurrency contributions are a form of political speech and also an expression, then maybe the government shouldn't attempt to regulate cryptocurrency contributions.

However, the Supreme Court has rejected “the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea,” but recognized that conduct could be “sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments.”²⁸⁸ Just because an action is an expression of an idea does not necessarily mean it is a form of protected speech.²⁸⁹ Although very little expression may be mere actual speech itself, the conduct needs to have some sort of communicative content intended to express a point of view.²⁹⁰ Burning a flag, wearing a black armband, and flying a red flag are all communicative gestures intended to convey an idea across to others.²⁹¹ Donating to a candidate through cryptocurrencies is not the same type of conduct and does not necessarily convey or express an idea to others. Individuals donate to candidates for a variety of reasons, which may not necessarily include expression of an idea to others.²⁹² Finally, in

²⁸³ See *Stromberg v. California*, 283 U.S. 359, 375 (1931).

²⁸⁴ See *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 510–11 (1969).

²⁸⁵ See *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

²⁸⁶ See generally *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam); *Texas v. Johnson*, 491 U.S. 397 (1989) (discussing symbolic acts).

²⁸⁷ See Victoria Killion, *First Amendment: Categories of Speech*, CONG. RES. SERV. (Jan. 16, 2019), <https://sgp.fas.org/crs/misc/IF11072.pdf>.

²⁸⁸ See *Texas*, 491 U.S. at 404.

²⁸⁹ See Ronald Kahn, *Symbolic Speech*, MIDDLE TENN. ST. U., <https://www.mtsu.edu/first-amendment/article/1022/symbolic-speech>.

²⁹⁰ See *Amdt1.2.12.2.1 Doctrine and Practice of Symbolic Speech: Overview*, CONGRESS.GOV: CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/amdt1_2_12_2_1/.

²⁹¹ See Kahn, *supra* note 289.

²⁹² See generally Eitan D. Hersh & Brian F. Schaffner, *Motivations of Political Contributors: An Audit*, BIPARTISAN POL'Y CTR. (Apr. 14, 2017), <https://bipartisanpolicy.org/download/?file=wp-content/uploads/2019/05/Motivations-of-Political-Contributors-An-Audit.-Eitan-D-Hersh-Brian-F-Schaffner.pdf>.

United States v. O'Brien, the Supreme Court developed a test to determine when a government regulation infringed upon symbolic speech.²⁹³

The *O'Brien* test essentially asks whether the regulation (1) is within the constitutional power of government, (2) furthers an important or substantial governmental interest, (3) is unrelated to the suppression of speech, and that (4) the restriction is necessary to further that interest.²⁹⁴ Here, even if we were to believe that cryptocurrency contributions are an expression and a form of symbolic speech, regulating cryptocurrency contributions passes the *O'Brien* test since this regulation is within the government's power, furthers a substantial interest in preventing corruption, is generally unrelated to suppressing speech itself, and is necessary to prevent loopholes associated with cryptocurrency contributions. Moreover, this test is quite similar to the compelling state interest aspects discussed throughout this paper. Although cryptocurrency donations are likely not a form of expression or symbolic speech, even if they were, a government regulation is constitutional.

V. THE FUTURE OF CRYPTOCURRENCIES AND ELECTIONS

Finally, a discussion on cryptocurrencies is incomplete without mentioning the future. Cryptocurrencies will likely become more mainstream in society and future elections. Several economists predict massive changes such as that the Nasdaq may float cryptocurrencies.²⁹⁵ Some even predict that cryptocurrencies will obtain an exchange traded fund and that more people will have access to cryptocurrencies.²⁹⁶ Further, more people may use blockchain technology to store and transport all types of information which may disrupt various industries from banking to communications.²⁹⁷

As younger generations become more tech savvy and comfortable with blockchain technology and cryptocurrencies, there may be an increase in cryptocurrency donations in elections. These issues will force states and the U.S. government to reckon with cryptocurrency contributions. Since some states have completely banned cryptocurrency contributions, individuals and entities may fight years of litigation arguing over their use. Unsurprisingly, an outright ban may not prevent their use and might actually lead to more corruption. But maybe other technology mediums may emerge that could displace blockchain technology and

²⁹³ See *United States v. O'Brien*, 391 U.S. 367, 377 (1968).

²⁹⁴ See *id.*

²⁹⁵ See Adam Barone, *The Future of Cryptocurrency in 2019 and Beyond*, INVESTOPEDIA (June 25, 2019), <https://www.investopedia.com/articles/forex/091013/future-cryptocurrency.asp>.

²⁹⁶ See Erin Griffith, *We're All Crypto People Now*, N.Y. TIMES (Apr. 25, 2021), <https://www.nytimes.com/2021/04/25/technology/cryptocurrency-mainstream.html>.

²⁹⁷ See *id.*

cryptocurrencies. Perhaps a new database system may arrive decrypting and displacing blockchain technology. Finally, if more people have access to cryptocurrencies and learn how to use blockchain technology, candidates and parties will likely change how they fundraise for elections.²⁹⁸

CONCLUSION

In the final analysis, blockchain technology and cryptocurrencies are avenues for free speech. But the government has a compelling state interest to regulate cryptocurrency contributions in order to prevent corruption and ensure that cryptocurrencies do not compromise elections. The government should regulate cryptocurrency contributions because of the potential for foreign interference, the volatile nature of cryptocurrencies, the untraceable path of cryptocurrencies, and finally, that unregulated cryptocurrencies in a political context may marginalize some voters. Here, we have seen a proposed way to regulate cryptocurrency contributions while balancing free speech interests. First, the government should mandate disclosure of cryptocurrency contributions. Next, candidates should only accept well-known cryptocurrencies. Furthermore, the government should require records of the receipt of cryptocurrency contributions. Finally, the government should establish a new regulatory agency to oversee cryptocurrencies. The alternative to regulating cryptocurrencies is targeting malicious actors and individuals who use cryptocurrencies for corrupt purposes. As the well renowned American computer scientist Ben Schneiderman once said: “Limiting malicious actors will require newly designed technology, social structures and government policies.”²⁹⁹ It’s easier for the U.S. government to simply regulate blockchain technology and cryptocurrencies, and the U.S. government has a compelling state interest to do so.

²⁹⁸ See Christine Stapleton, *Bitcoin Campaign Contributions Are Getting More Mainstream*, GOV’T TECH. (Sept. 17, 2020), <https://www.govtech.com/budget-finance/bitcoin-campaign-contributions-are-getting-more-mainstream.html>.

²⁹⁹ Dan Anderson, *Many Tech Experts Say Digital Disruption Will Hurt Democracy*, ELON U. (Feb. 21, 2020), <https://www.elon.edu/u/news/2020/02/21/many-tech-experts-say-digital-disruption-will-hurt-democracy/>.