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In 1974, Congress passed amendments to the Federal Elections Campaign Act that, for the first time in our nation's history, seriously undertook to regulate political campaigns. Most states followed suit, and virtually overnight, politics became a heavily regulated industry.

Yet we now see, on videotape and in White House photos, shots of the President of the United States meeting with arms merchants and drug dealers; we learn of money being laundered through Buddhist nuns and Indonesian gardeners; we read that acquaintances of the President are fleeing the country, or threatening to assert Fifth Amendment privileges to avoid testifying before Congress.¹ Regulation, we were told two decades ago, would free our elected officials from the clutches of money, but they now seem to devote more time than ever before to pursuing campaign cash. The 1974 reforms, we were promised, would open up political competition, yet the purely financial advantage enjoyed by incumbents in congressional races has increased almost threefold. Regulation was supposed to restore confidence in government, yet the percentage of Americans who trust their government to "do what is right most of the time" is half what it was before the 1974 act, and campaigns themselves seem nastier and less informative.

Well, say apologists for the law, if we have failed, it is only because our labors have just begun. If our goals seem further away, we must redouble our efforts. We must ban political action committees (PAC's). We must prevent "bundling," a procedure whereby a group collects contributions from its members and delivers them all at once to a candidate's election committee. We must ban large contributions to political parties ("soft money"). . . .

If existing regulation has failed so spectacularly, and existing laws are being broken seemingly at will, is more regulation the solution? Before we rush off on another round, it may be worthwhile to examine the premises on which the impulse to regulate campaign finance is based. Each of them is severely flawed. . . .

II

The first assumption underlying proposals for campaign-finance regulation is that too much money is being spent on political campaigning. The amounts are often described in near-apocalyptic terms. Candidates, we are informed, amass "huge war chests" from "fat cats" who "pour their millions" into campaigns and "stuff the pockets" of representatives in an "orgy" of contributions. Expenditures "skyrocket," leaving legislators "awash" in "obscene" amounts of cash.

Hyperbole aside, however, the amount spent each year on all political activity in the United States, from every ballot referendum to races for every office from dog catcher to President, is less than the amount spent on potato chips. Total spending on congressional races in 1995-96 was less than what is spent annually on Barbie dolls. Total PAC contributions in federal elections in 1995-96 were just about equal to the amount needed to produce the most recent *Batman* movie.

On a per-voter basis, our expenditures, are equally low: less than \$2.50 per eligible voter per year, or about the cost of a single video rental, for all congressional races, including all primaries...

Perhaps more relevant than any of these comparisons are the amounts spent on political campaigning versus other types of advertising. In 1996, the Home Depot corporation alone spent more on advertising than federal law allowed Bill Clinton, Bob Dole, and Ross Perot put together to spend on the general election. Although Michael Huffington was roundly criticized for "exorbitant" spending in his 1994 race for a Senate seat from California, it cost him less than what Sony International spent in the same year to promote a single compact disc by Michael Jackson. . . .

The plain truth is that it costs money to communicate, and there is no reason to expect that political communication should come free. This is the crucial insight of the Supreme Court's 1976 decision in *Buckley v. Valeo*, a case issuing from a challenge to the 1974 Federal Elections Campaign Act by a broad coalition of groups ranging from the ACLU to the Conservative and Libertarian parties.

There the Court struck down mandatory limits on campaign spending as well as limits on what a candidate could spend from his own personal funds. The Court did not say, as its critics have alleged, that money equals speech; rather, it recognized that limits on spending can restrict speech just as surely as can a direct prohibition. Imagine, for example, if newspapers were limited to \$100,000 a year for publishing costs: most would go out of business, and those that remained would become very thin indeed. . . .

Spending on political advertisements is important to educate voters, increasing their interest in elections and their knowledge of candidates and issues. Repetition plays an important part in this process: the electorate's hatred of 30-second campaign ads is surpassed only by its desire to get its political information by means of those same ads. And the ads cost money.

Although campaign-finance reformers often appeal to the public's un-happiness with negative ads, negativity has long been a feature of political campaigns, and money is not the source of it. (As long ago as 1796, the presidential candidate Thomas Jefferson was attacked as "an atheist, anarchist, demagogue, coward, mountebank, trickster, and Francomaniac." . . .) In fact, if the goal is to have positive campaigns, even *more* money would be needed, for the simple reason that positive ads are less memorable than negative ones and hence need to be repeated more frequently. Besides, a limit on spending would mean that candidates would have to depend more on the media to get their message across, and the press is often more negative in its campaign coverage than the contestants themselves.

There is, finally, no objective criterion by which to measure whether "too much" is being spent on political campaigns. But as we have seen, spending in this country is not high. Considering the vital importance of an informed electorate to democratic government, it is hard to discern why it should be lower.

The hidden premise behind the idea that too much is being spent on campaigns is that money "buys" election results—a second assumption of reformers. It is true that the candidate who spends the most money wins most of the time. But the cause-and-effect relationship between spending and victory is nowhere near so straightforward as this might suggest.

For one thing, the formulation neglects the desire of donors to give to candidates likely to win. In other words, it may be the prospect of victory that attracts money, not the other way around. . . . Or a candidate's fund-raising edge may simply reflect the relative status of his popularity, later to be confirmed or disconfirmed at the polls.

Even when the ability to raise and spend money actually succeeds in changing the outcome of a race, it is ballots, not dollars, that ultimately decide who wins, and ballots reflect the minds of voters. All that spending can do is attempt to change those minds. It would be a strange First Amendment that cut off protection for speech at the point where speech began to influence people's views, and it reflects a remarkable contempt for the electorate to suggest that it is incapable of weighing the arguments being tendered for its consideration.

Indeed, there is ample evidence that the electorate does so discriminate, and that higher spending in behalf of a losing argument will not necessarily translate into electoral triumph. In the Republican takeover of Congress in 1994, for example, the 34 victorious challengers spent, on average, just two-thirds of the amount spent by their Democratic opponents, who also enjoyed the inherent advantage of incumbency. By contrast, in the 1996 race for the Republican presidential nomination, Phil Gramm, who raised the most money, was the first to have to drop out. As Michael Malbin of the Rockefeller Institute of Government has observed, "Having money means having the ability to be heard; it does not mean that voters will like what they hear."

The key variable in elections is not which candidate spends the most, but whether or not challengers are able to spend enough to overcome the advantage of incumbency and make their names and issues known to voters. Once they reach this threshold, races are up for grabs. For example, in the 1996 House races, 40 percent of challengers who spent over \$600,000 won, as opposed to just 3 percent who spent less than \$600,000. Once the threshold was crossed, it mattered little whether or not the challenger was outspent, or by how much. The problem, if it can be called that, is not that some candidates "buy" elections by spending too much, but that others spend too little to get their message to the voters.

Still another assumption of reformers is that, if we truly cared about self-government and participatory democracy, we would be better off if campaigns were funded by many small contributors rather than by fewer large ones.

In fact, the burden of financing political campaigns has *always* fallen to a small minority, both in the United States and in other democracies. Nearly eighteen million Americans now make contributions to a political party, candidate, or PAC during an election cycle. Although this figure is higher than at any other time in American history, and represents a broader base of voluntary public support than has been enjoyed by any other system of campaign funding anywhere, it still comes to less than 10 percent of the voting-age population.

Which sorts of candidates are typically able to raise large sums of money in small amounts, as the reformers prefer? In the years prior to federal funding of presidential campaigns, the two most successful in this respect were Barry Goldwater and George McGovern. The former raised \$5.8 million from over 400,000 contributors in 1964, only to suffer a landslide defeat, while the latter, who raised almost \$15 million from donors making average contributions of about \$20, lost in an even bigger landslide eight years later. More recently, Oliver North raised approximately \$20 million, almost all from small contributors, for his 1994 U.S. Senate race, outspent his rival by almost four to one, and still lost to a candidate plagued by personal scandal—primarily because the electorate, rightly or wrongly, viewed him as too "extreme."

What these examples suggest is that the ability to raise large sums in small contributions can be a sign less of broad public support, as reformers assert, than of fervent backing by an ideological minority. Other groups positioned to exert influence by this means tend to be those (like unions) in possession of an ongoing structure for mobilizing their constituents or those we usually call "special interests." It is the inchoate, grass-roots public that more often fails to make its interests known, and is therefore frequently reliant on individuals with large fortunes to finance movements that will represent it. ...

Ironically, the banning of large contributions, which means that no single gift is likely to make much difference in a political race, gives potential donors little incentive to become involved. A radical campaign can overcome this difficulty: its supporters tend to be motivated more by ideology than by rational calculations of a candidate's chances of winning. But this just further underscores the way in which banning large contributions can help render the political system more rather than less vulnerable to forces on the fringes of the mainstream—hardly, one presumes, the result the reformers have in mind.

A corollary fallacy entertained by reformers is that the financial resources placed at a candidate's disposal should ideally reflect his level of popular support. But this is to confuse the purpose of elections with the purpose of campaigns. The former do measure popular support. The latter, however, are about something else: persuading voters, and *improving* one's level of support. This, as we have seen, requires monetary expenditures, and it is a sign of health in a democracy when such expenditures are forthcoming. . . .

Perhaps no belief is more deeply rooted in the psyche of reformers—and of the public at large—than that the money drawn into the system through political campaigns corrupts not only the campaigns themselves but, once a candidate is elected, the entire legislative process. Many office-holders have themselves complained about the influence of money in the legislature. But political scientists and economists who have studied this matter have consistently concluded otherwise. As John Lott and Stephen Bronars, the authors of one such study, conclude: "Our tests strongly reject the notion that campaign contributions buy politicians' votes. . . . Just like voters, contributors appear able to sort [out] politicians who intrinsically value the same things that they do."

The primary factors affecting a legislator's voting record are personal ideology, party affiliation, and constituent wishes—not contributions. Does anybody really think [Texas GOP Senator] Phil Gramm would suddenly drop his opposition to gun control if the National Rifle Association (NRA) ceased contributing to his campaigns? Of course not: the NRA supports Gramm *because* he opposes gun control, and so, almost certainly, do many if not most of his Texas constituents.

This makes perfect sense. Individuals who enter politics usually do so because they have strong views on political issues; party support is almost always more important to election than any

one contribution; and, to repeat, a legislator wins with votes, not dollars. For a politician to adopt an unpopular or unwise position that will cost him voter support in exchange for a \$5,000 campaign contribution—the maximum amount allowed under federal law—would be counterproductive, to say the least.

This is not to say that other factors never come into play. A legislator may be concerned about how his vote will be reported in the press, or whether an opponent can easily caricature him in a negative ad. Personal friendships may affect a voting decision, as may the advice of aides and staff, itself often influenced by ideology. Money is another such secondary factor, but it is only one, and not necessarily the political commodity of greatest value. Many of the most influential Washington lobbying groups, including the American Association of Retired Persons, the National Education Association, and the American Bar Association, do not make political contributions. The NRA does have a large PAC, but it also has nearly two million members who care intensely about its issues. Although gun-control advocates complain that the NRA outspends them, the more important fact is that it also outvotes them.

Finally, most issues find well-financed lobbies on both sides. A seemingly dull proposal to introduce a one-dollar coin, for example, may line up metal companies, vending-machine manufacturers, and coin laundries on one side, paper and ink companies on the other. Similarly with higher-profile issues like tort reform, where well-financed insurance interests take one position and equally well-financed trial lawyers the other. At least one set of these contributors, and often both, will suffer enormous losses in the legislative process, a fact often ignored by reformers.

When push comes to shove, even the most ardent reformers are rarely able to point to a specific instance of corruption. Ask a reformer to name which of our 535 Congressmen and Senators are acting contrary to what they believe to be the public good, or to what their constituents desire, because of campaign contributions, and the answer every time is some variation of "It's the system that's corrupt." But if we cannot name individuals corrupted by the system, on what basis are we to conclude that corruption is a problem intrinsic to the "system"?

III

When it came time to fight the American Revolution, the founders of this nation did not go to the king seeking matching funds with which to finance their revolt. Instead, in the Declaration of Independence, they pledged their fortunes as well as their lives and sacred honor.

Today, in order to cure the alleged problem of fortunes in politics, reformers offer a variety of complex schemes aimed at *preventing* private citizens from demonstrating their commitment to democratic political change. Former Senator Bill Bradley and House Minority Leader Richard Gephardt claim that we need a constitutional amendment to overturn the *Buckley* decision. In Gephardt's sweeping formulation, there is a "direct conflict" between "freedom of speech and our desire for healthy campaigns in a healthy democracy," and "you can't have both." Their proposed amendment, if enacted, would grant a greater degree of protection to commercial speech, flag burning, and Internet porn than to the discussion of political candidates and issues.

Meanwhile, "moderate" reformers continue to push the McCain-Feingold bill, lately shorn of a ban on PAC's that even its sponsors admit was "probably" unconstitutional. Even so, this bill would place vast new limits on the freedom of political discussion, ban most contributions to political parties to pay for voter registration, slate cards, rallies, and get-out-the-vote drives, and restrict speech in ways directly prohibited by standing Supreme Court decisions.²

If it is not the case that too much money is spent on campaigns, or that money, rather than the character of a handful of elected officials, is the source of political corruption, or that large contributors buy elections or in some way frustrate "true democracy," why should we tolerate such gross infringements of traditional First Amendment freedoms? What would be accomplished by measures like those being proposed by the reformers that would not be better accomplished by minimal disclosure laws that simply require the reporting of all sources of financial support?

Of course, disclosure laws may also be broken, as they appear to have been in the 1996 campaign. Character matters, and the rule has yet to be invented that someone will not succeed in violating. But what all the reformers overlook, from the most extreme to the most moderate, is that we already have, in the First Amendment, a deeply considered response to the problems inherent

in democratic elections—and one that is far superior to the supposedly enlightened system of regulation with which we are now saddled.

By assuring freedom of speech and the press, the First Amendment allows for exposure of government corruption and improper favors, whether these consist of White House meetings with drug dealers or huge tax breaks for tobacco companies. By keeping the government out of the electoral *arena*, it allows for robust criticism of government itself, and prevents incumbents from manipulating the election-law machinery in their own favor. It frees grass-roots activists and everyday speech alike from suffocating state regulation, thereby furthering the democratic aim of political discussion. And it allows candidates to control their own message rather than having to rely on the filters of the press or the vagaries of bureaucrats and judges called upon to decide which forms of speech are to be limited as "endorsements or attacks," and which allowed as "genuine debate."

In the vast muddle that has been made by our decades-old regulatory folly, the only real question concerns whose logic we will now follow: the logic of those who gave us our existing campaign-finance laws and who, despite a disastrous record, now want license to "reform" them still further, or the logic of the founders who gave us the First Amendment. For most Americans, I suspect, the choice would be an easy one.